# SUPREME COURT OF THE UNITED STATES.

No. ~~218~~ 124.

ADAM OGILVIE, HORATIO J. ANGLE, AND WILLIAM ST. JOHNS, TRADERS IN PARTNERSHIP, UNDER THE FIRM OF OGILVIE, ANGLE & CO., ET AL., APPELLANTS,

vs.

THE KNOX INSURANCE COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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1 Pleas of circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and fifty-two, before the Hon. Elisha M. Huntington, judge of said district of Indiana.

ADAM OGILVIE, HORATIO J. ANGLE, and WILLIAM ST. JOHN, of Muscatine, and citizens of the State of Iowa, traders in partnership under the firm of Ogilvie, Angle & Co.; SAMUEL GATTY, of St. Louis, and a citizen of the State of Missouri; WALSTEIN S. BROWN, of Cincinnati, of the State of Ohio; WESLEY SMEAD and WILLIAM A. COLLARD, of Cincinnati, and citizens of the State of Ohio, traders in partnership under the firm of Smead & Co.; EDWIN A. CARRINGTON, of St. Louis, and a citizen of the State of Missouri; JOSEPH H. CONN, of St. Louis, and a citizen of the State of Missouri, who sues for the use of Anderson and Conn, merchants of St. Louis, Missouri; JOHN J. ROE, JAMES HEWITT, and ROBERT M. V. KERCHEVAL, of St. Louis, and citizens of the State of Missouri, traders in partnership under the firm of Hewitt, Roe & Co.; ENOCH YOST, of Ypsilanti, and a citizen of the State of Michigan; GEORGE W. OSBORN, of Ypsilanti, and a citizen of the State of Michigan; FREDERICK GILLETT, of Cincinnati, and a citizen of the State of Ohio,

*vs.*

THE KNOX INSURANCE COMPANY and others.

} In Chancery.

2 Be it remembered, that at the April rules of said court for the year 1852, come now the complainants, by Samuel Judah, solicitor, and file their following bill of complaint, in the words and figures following, to wit:

To the judges of the circuit court of the United States for the district of Indiana:

Adam Ogilvie, Horatio J. Angle, and William St. John, of Muscatine, and citizens of the State of Iowa, traders in partnership under the firm of Ogilvie, Angle & Co.; Samuel Gatty, of St. Louis, and citizen of the State of Missouri; Walstein S. Brown, of Cincinnati, and a citizen of the State of Ohio; Wesley Smead and William A. Collard, of Cincinnati, and citizens of the State of Ohio, traders in partnership under the firm of Smead & Co.; Edwin A. Carrington, of St. Louis, and a citizen of the State of Missouri; Joseph H. Conn, of St. Louis, and a citizen of the State of Missouri, who sues for the

use of the firm of Anderson & Conn, merchants of St. Louis, Missouri; John J. Roe, James Hewitt, and Robert M. V. Kercheval, of St. Louis, and citizens of the State of Missouri, traders in partnership under the firm of Hewitt, Roe & Co.; Enoch Yost, of Ypsilanti, and a citizen of the State of Michigan; George W. Osborn, of Ypsilanti, and a citizen of the State of Michigan; Frederick Gillett, of Cincinnati, and a citizen of the State of Ohio, who sue for themselves and such other creditors of the Knox Insurance Company hereafter mentioned as may make themselves parties hereto, bring this their suit against the Knox Insurance Company, a corporation created by an act of the general assembly of the State of Indiana, holding its principal office of business at Vincennes, in said State of Indiana, and a citizen of the said State of Indiana: Levi Sparks, Peter Myers, Dutee Underwood, and Aris, his wife; William Leutz, Thomas W. Prather, James Smith, John Dixon, and Emily C., his wife; Thomas M. Eddy, Benjamin F. Marsh, Hiram Maberry, Woods Maberry, Myron Stratton, and
3 Mary A., his wife; James Mitchell, George F. Savitz, William G. Armstrong, Benjamin Taylor, Thomas Taylor, John S. Battorff, William F. Cullom, Simeon Battorff, Elizabeth Wathen, administratrix of the estate of Athanasius Wathen, now deceased; Cynthia Maberry, Henry French, Jacob Swartz, Wm. Logan, John D. Woodburn, Thomas L. Dean, and Mary E., his wife; Sarah Maberry, William Hughes, Andrew S. White, Samuel P. Wisaker, William Hughes, and Michael Wolfe, the said Andrew, Samuel, William, and Michael being traders in partnership under the firm of A. S. White & Co.; George W. Swartz, George Swartz, John Battorff, Sophia Battorff, Samuel Patterson, and Samuel Battorff, all of Clark county, and citizens of the State of Indiana.

And thereupon your orators complain that, some time on or before the 12th day of February, 1850, the said Knox Insurance Company was duly organized and transacting business under its act of incorporation, at Vincennes aforesaid, and there and then had authority under its said act of incorporation to receive further subscriptions to its capital stock; and thereupon, afterwards, at the several times hereinafter mentioned, the said Levi Sparks, Dutee Underwood, William Leutz, James Smith, John Dixon, Thomas M. Eddy, Hiram Maberry, Thomas W. Prather, Myrom Stratton, James Mitchell, William G. Armstrong, Benjamin F. Marsh, Benjamin Taylor, John S. Battorff, Athanasius Wathen, now deceased, Cynthia Maberry, Henry French, Peter Myers, Jacob Swartz, Carter J. Logan, Thomas L. Dean, Sarah Maberry; the said Andrew S. White, Samuel Wisaker, William Hughes, and Michael Wolfe, under their said firm name of A. S. White & Co.;
George W. Schwartz, George Schwartz, William Maberry,
4 William F. Cullom, and Sophia Battorff, became subscribers to the capital stock of the said the Knox Insurance Company, in shares of one hundred dollars each, as follows, to wit: On the 23d day of February, 1850, the said Levi Sparks became such subscriber for ten shares, and in consideration thereof he and the said Peter Myers, as his security, executed their note in favor of the said the Knox Insurance Company, dated on said day, for the sum of nine hundred dollars, and delivered the same to the said company, in whose possession it now is; and for the balance of the said subscription, one

hundred dollars, then accepted a bill of exchange drawn on him by the said Simeon Battorff, which said bill was never paid, but was renewed by another bill, dated October 4, 1850, drawn by the said Simeon, and accepted by the said Levi, delivered to the said company, and now in their possession, over due and unpaid.

On the 6th day of April, 1850, the said Dutee Underwood became such subscriber for ten shares, and in consideration thereof paid the sum of one hundred dollars, and executed his note for the further sum of nine hundred dollars in favor of said company of that date, and delivered the same to the said company, who now hold the same; and then, also, the said Dutee, with Aris, his wife, to secure the payment of the money by the said note promised to be paid, conveyed to the said company, in mortgage, the following real estate, being parts of lots 145 and 144 on Pearl street, in Jeffersonville, Clark county, Indiana, commencing at a stake 40 feet from the northeast corner of lot No. 145, extending thence south along Pearl
5 street 30 feet to a stake, thence west 107 feet, thence north 30 feet, thence east 107, which said mortgage, dated the said 6th day of April, 1850, is now held by said company, and was recorded in the recorder's office of Clark county, Indiana, on the 13th day of April, 1850, in book No. 1, volume 1, letter A, pages 220, 221. On the 6th day of May, 1850, the said William Leutz became such subscriber for ten shares, and in consideration thereof paid the sum of one hundred dollars, and for the remainder of the said subscription, nine hundred dollars, he and one Thomas W. Prather executed their note in favor of the said company, dated the said 6th of May, 1850, and delivered the same to the said company, in whose possession it now is. On the 7th day of May, 1850, the said James Smith became such subscriber for ten shares, and in consideration thereof paid one hundred dollars in cash, and, with the said Jacob Schwartz, executed their note for the remainder, nine hundred dollars, dated the said 7th day of May, 1850, in favor of said company, and delivered the same to the said company, in whose possession the same now is. On the 16th day of March, 1850, the said John Dixon became such subscriber for five shares, and in consideration thereof paid the sum of fifty dollars, and executed his note of that date in favor of the said company for the sum of four hundred and fifty dollars, and delivered the same to the said company, in whose possession it now is; and then also the said John Dixon, and Emily C., his wife, to secure the payment of the said note, conveyed, in mortgage, to the said
6 Knox Insurance Company the following real estate, to wit: Lot No. 6, in block 65, in Jeffersonville, Indiana, as appears by the said mortgage deed dated the said 16th March, 1850, and recorded in the recorder's office of Clark county, Indiana, on the 13th April, 1850, in book No. 1, volume 1, letter A, pages 219, 220. On the 4th day of May, 1850, the said Thomas M. Eddy became such subscriber for ten shares, and in consideration thereof, with the said Benjamin F. Marsh, made their note of that date in favor of the said company, and now in possession of the said company, for the sum of nine hundred dollars; and for the balance of the said subscription, one hundred dollars, the said Thomas M. Eddy on the same day

executed his note in favor of said company, payable on demand, and delivered the same to said company, in whose possession it now is, and unpaid and owing. On the 23d day of February, 1850, the said Hiram Maberry became such subscriber for twenty-five shares of the said stock, and in consideration of twenty-two hundred and fifty dollars, part of the said subscription, on the said day, with the said Woods Maberry, executed their note of that date in favor of said company for said last-mentioned sum of money, and delivered the said note to said company, in whose possession it now is; and that on the same day the said Woods Maberry became such subscriber for twenty-five shares of the said stock, and in consideration of twenty-two hundred and fifty dollars, part of the said subscription on the same day, with the said Hiram Maberry, executed their note
7 of that date in favor of the said company for said last-mentioned sum of money, and delivered the said note to the said company, in whose possession it now is; and that the remainder of the money due on the said subscription of the said Hiram and Woods, being two hundred and fifty dollars on each, and in the whole five hundred dollars, was secured by a certain bill of exchange, to which the said Hiram Maberry and Woods Maberry were parties, and which was not paid, but was renewed by a certain other bill for the same amount, dated October 4, 1850, drawn by said Hiram, and accepted by said Woods in favor of said company, and now in the possession of said company, over due and not paid. On the 7th day of May, 1850, the said Thomas W. Prather became such subscriber for ten shares of the said stock, and on account thereof afterwards paid the sum of one hundred dollars, and for the balance, nine hundred dollars, in consideration thereof, on the said 7th day of May, 1850, with the said William Leutz, executed their note of that date for this amount in favor of the said company, and delivering the same to the said company, in whose possession it now is. On the 1st day of June, 1850, the said Myron Stratton became such subscriber for five shares of said stock, and has paid on account thereof in cash fifty dollars, and for the remainder, four hundred and fifty dollars, in consideration thereof, on the said day, made his note in favor of said company of that date and amount, and now in possession of said company, and to secure the payment of the said money in said
8 note promised to be paid, the said Myron and Mary A., his wife, by their deed of the said date, conveyed in mortgage to the said company the following real estate, to wit: Part of lot No. 231, in Jeffersonville, Indiana, commencing at a stake sixty feet from the northeast corner of said lot, thence along Wall street south thirty-one feet to a stake, thence west seventy-one feet eight inches, thence north thirty-one feet, thence east seventy-one feet eight *eight* inches, as appears by said deed of mortgage recorded in the recorder's office of Clark county, Indiana, *Indiana*, in book No. 1, volume 1, letter A, pages 247, 248.

On the 10th day of May, 1850, the said James Mitchel became such subscriber for ten shares of the said stock, and in consideration thereof, on the said day, with the said George F. Savitz, made their note of that date for nine hundred dollars, parcel of the amount of said subscription, in favor of the said company, and delivered the same to the

said company, in whose possession the same now is; and your orators say that they have no knowledge of it, concerning the remainder of said subscription money, one hundred dollars, and know *but* whether it was paid, or secured to be paid, and if secured, how.

On the 4th day of May, 1850, the said William G. Armstrong became such subscriber for twenty shares of said stock, and in consideration thereof, to secure the payment of eighteen hundred dollars, parcel thereof, on the said day, with the said Benjamin F. Marsh, made their note of that date for said sum of money in favor of said company, and delivered the same to said company, in whose
9 possession the same now is; and that the balance of said subscription, being two hundred dollars, was on the said day secured to be paid to said company by a bill of exchange for that amount, which said bill of exchange was not paid, but was renewed by a certain other bill of exchange, dated the 30th day of September, 1850, drawn by said Marsh on said Armstrong, and accepted by him, in favor of said company, for the sum of money now held by said company, over due and unpaid.

That on March 16th, 1850, the said Benjamin F. Marsh became such subscriber for twenty shares of the said stock, and in consideration thereof, to secure the payment of eighteen hundred dollars, parcel thereof, on the said day, with the said William G. Armstrong, made their note of that date for that sum in favor of the said company, and delivered the same to the said company, in whose possession it now is; and then, also, on the same day, to secure the sum of two hundred dollars, being the balance of said subscription, the said Benjamin and William made their certain bill of exchange, and delivered the same to said company; and that on the 30th day of September, 1850, the said bill of exchange, being then unpaid, was renewed by another bill of the said last date, for said amount, drawn by said Armstrong and accepted by said Marsh, in favor of said company, delivered to and now in the possession of said company, over due and unpaid.

That on the 8th day of May, 1850, the said Benj'n Taylor became such subscriber for ten shares of the said stock, and on account of such subscription at same time paid to the said company the sum of
10 one hundred dollars; and on the said 8th day of May, 1850, to secure the payment of the remainder of the said subscription, being nine hundred dollars, and in consideration thereof, the said Benjamin Taylor, with the said Thomas Taylor, made their note, dated on the said day, for the said sum of money, in favor of the said company, and delivered the same to the said company, in whose possession it now is.

That on the 23d day of February, 1850, the said John S. Battorff became such subscriber for twenty shares of the said capital stock, and to secure the payment of eighteen hundred dollars, parcel thereof, the said John, with the said William F. Cullom and Simeon Battorff, on the said day, made their note for that amount in favor of the said company, and delivered the same to the said company, in whose possession it now is; and for the balance of the said subscription, being two hundred dollars, the said John and Simeon made their bill of exchange of the said date for the said sum of two hundred dollars,

and delivered the same to said company, which said bill of exchange was not paid, but afterwards, on the 4th day of October, 1850, was renewed by a certain other bill of exchange, of said [of] last-mentioned date, in favor of said company, for said sum of money drawn by said Simeon on, and accepted by, said John, which was then delivered to the said company, and is now in their possession, over due and unpaid.

11 On the 23d day of February, 1850, the said Athanasius Wathen, now deceased, subscribed for fifty shares of the said stock, and to secure the payment of four thousand five hundred dollars, parcel of the sum so subscribed, on the same day the said Wathen and one James Kegion made their note of that date for that sum of money in favor of the said company, and delivered the same to the said company, in whose possession the same now is; and on the same day the said Athanasius Wathen and said James made their bill of exchange in favor of said company for five hundred dollars, the remainder of the amount of said subscription money, which said bill, so made, was not paid, but afterwards, on the 28th day of September, 1850, was renewed by a certain other bill of exchange of the last-mentioned date, for the same sum of money, in favor of the said company, and drawn by said Kegion on, and accepted by, the said Wathen, now deceased, which said bill was then delivered to said company, and is now in its possession, over due and unpaid.

12 On the 2d day of May, 1850, the said Cynthia Maberry and the said Sarah Maberry each subscribed for five shares of the said stock, and on the same day each of them, with the said Woods Maberry and the said Hiram Maberry for security in each note, made their certain notes, each for four hundred and fifty dollars, parcel of said subscription, dated the said 2d day of May, 1850, in favor of the said company, which notes were delivered to the said company, and are now in its possession; and to secure the balance of fifty dollars on each of said subscriptions, in the whole one hundred dollars, in consideration thereof, on the same day the said Woods Maberry and Hiram Maberry made their note of that date for that sum of money, payable on demand, in favor of the said company, and delivered the same to the said company, in whose possession it now is, and wholly unpaid.

On the 9th day of March, 1850, the said Henry French became such subscriber for twenty shares of the said stock, and in consideration thereof, for eighteen hundred dollars, parcel thereof, on the said day, with Peter Myers, executed their notes of that date for that sum in favor of the said company, and delivered the same to the said company, in whose possession the said note now is; and on the same day the said Peter Myers became such subscriber also for twenty shares of said stock, and in consideration thereof, for the sum of eighteen hundred dollars, parcel thereof, on the same day, with the said Henry French, executed their note in favor of the said company of that date for that sum, and delivered the same to the said company, in whose possession the same now is; and for the balance of the said subscription, two hundred dollars each, in the whole four hundred dollars, on the said day the said Henry French and Peter Myers made their

certain bill of exchange of that date for that sum in favor of said company, which said bill so made was not paid, but was afterwards, on the 30th day of September, 1850, renewed by a certain other bill of exchange for said sum of four hundred dollars in favor of said company, and of that date, drawn by said Henry French on, and accepted by, the said Peter Myers, and delivered to said company, and now in its possession, over due and unpaid.

On the 7th day of May, 1850, the said Jacob Schwartz became such subscriber for ten shares of the said stock, and in consideration thereof, paid the sum of one hundred dollars; and on the said day, to secure the balance of said subscription money, being nine hundred dollars, with the said James Smith, made their note of said date for that amount, and delivered the same to the said company, in whose possession the same now is. On the 4th day of May, 1850, the said Carter J. Logan became such subscriber for ten shares of the said stock, and in consideration thereof, paid the sum of one hundred dollars; and on the said day, to secure the remainder of the said subscription money, being nine hundred dollars, with the said John D. Woodburn, made their note of that date for that sum of money, and delivered the same to the said company, in whose possession the same yet is. On the 2d day of May, 1850, the said Thomas L. Dean became such subscriber for ten shares of the said stock; and on the said day, to secure the same in part, made his note of that date, payable to said company on demand, for the sum of one hundred dollars; and to secure the remainder of said subscription money, being nine hundred
14 dollars, on the same day made his certain other note of the same date in favor of said company, for the said last mentioned sum of money, and delivered the said notes so made, to the said company, in whose possession the same yet remain; and to secure the payment of the said sum of nine hundred dollars in said last-mentioned note mentioned, on the same day the said Thomas, and Mary E., his wife, by their deed of that date, conveyed in mortgage to the said company, part of lot No. ninety-nine, in Jeffersonville, Indiana, commencing at the southeast corner of the said lot, extending thence along Market street sixty feet, thence north one hundred feet, thence west sixty feet, and thence south one hundred feet to the beginning, as appears by said mortgage recorded in the recorder's office of Clark county, Indiana, in book No. 1, vol. 1, letter A, pages 227, 228.

That on the 23d day of February, 1850, the said Andrew S. White, Samuel Wisaker, William Huges, and Michael Wolfe, by their said firm name of A S. White & Co., became such subscribers for forty shares of the said stock, and paid on account thereof four hundred dollars; and to secure the remainder of the said subscription money, being thirty-six hundred dollars, on the same day, they in the name of the said firm, and the said William Huges in his own name, made their note of that date for that sum of money in favor of said company, and delivered the same to the said company, in whose possession the same now is. On the 2d day of May, 1850, the said George
15 W. Schwartz became such subscriber for ten shares of the said stock, and paid one hundred dollars on account thereof; and to secure the payment of the balance of the said subscription money,

being nine hundred dollars, on the said day the said George W., and the said George Schwartz and Simon Battorff, made their note in favor of said company, of that date, for the said last-mentioned sum of money, and delivered the same to the said company, in whose possession the same yet is.

On the 11th day of April, 1850, the said George Swartz became such subscriber for ten shares of the said stock, and paid on account thereof one hundred dollars; and to secure the payment of the remainder of the said subscription money, being nine hundred dollars, the said George and the said George W. Swartz, on the said day, made their note of that date in favor of the said company for the said last-mentioned sum of money, and delivered the same to the said company, in whose possession the same now is.

That on the 22d day of February, 1850, the said William F. Cullom became such subscriber for twenty shares of the said capital stock, and in consideration thereof, to secure the payment of eighteen hundred dollars, parcel thereof, the said William F. Cullom and the said Simon Battorff and John S. Battorff, on the said day, made their note for said sum of money in favor of said company, and delivered the same to the said company, in whose possession the same now remains; and that to secure the payment of the remainder of the said subscription money, being two hundred dollars, a bill of exchange was
16 made by said William F. Cullom and delivered to the said company, but was not paid, and was afterwards, on the 28th day of September, 1850, renewed by a bill of exchange of that date, for the same sum of money, in favor of said company, drawn by the said Samuel Patterson on, and accepted by, the said Cullom, and then delivered to the said company, in whose possession the same now is, over due and unpaid.

And that on the 1st day of May, 1850, the said Sophia Battorff became such subscriber for ten shares of the said capital stock, and to secure the payment of nine hundred dollars, part of the said subscription money, on the said day, the said Sophia Battorff and the said Samuel Battorff made their note of that date in favor of said company for the said sum of nine hundred dollars, and delivered the same to the said company, in whose possession the same now is, and your orators have no knowledge of the payment or security for the balance of said subscription, being one hundred dollars.

Your orators further state that all the said bills of exchange are now and long have been due and payable, but that nothing has been paid on them; and that all the said notes were payable to the order of the said Knox Insurance Company, and was all made for value received, and payable without relief from the valuation or appraise-
17 ment laws of the State of Indiana; and that payment of the said notes payable on demand has been often demanded, and particularly on the 1st day of June, 1850, but that no part of any of them has ever been paid; and that all of said notes not stated above to be payable on demand, are payable in such sums and at such times as might be duly assessed thereon by order of the directors of said company, to meet the exigencies of said company, and that before any of said subscription was made or notes given by said defendants. On

the 12th day of February, 1850, by an order of the said directors, an assessment of ten per cent. was made on all stock subscribed, or which might be subscribed, to meet which assessment the said bills of exchange and notes payable on demand, above mentioned, were executed and the said cash payment made; that afterwards, on the 17th day of December, 1850, a second assessment of ten per cent. on all stock was made by the said directors, payable in sixty days; that afterwards, on the 11th day of February, 1851, a third assessment was so made of ten per cent. payable on demand; that on the 13th day of May, 1851, a fourth assessment was so made of thirty per cent. payable on demand; and that on the 28th day of June, 1851, a fifth and last assessment was so made of forty per cent., payable on the 10th day of July, then next following, of all which said assessments so made the said defendants, subscribers as aforesaid, had notice; and which said assessments so payable on demand was demanded of the said defendants,
18 subscribers as aforesaid, by the said company, on the day said assessments were made; and that all the money by the said defendants in the said bills of exchange and notes promised to be paid, with interest thereon from the time when each of them became due, is due and owing to the said company; and that, as your orators are informed and believe, the said company has not instituted any suit or proceeding at law or in equity on said bills, notes, or mortgages, or any of them, to compel the payment of the money by said bills and notes and mortgages secured, or any part thereof.

Your orators further state that they severally are creditors of the said Knox Insurance Company by reason of losses on policies of insurance issued to them, respectively, by the said company at various times after the said subscription of the said defendants to the stock of the said company were made, as above stated, and in the manner following:

The said Adam Ogilvie, Horatio J. Angle, and William St. John, by the consideration of the circuit court of Knox county, Indiana, at the August term thereof, and on the 20th day of August, in the year 1851, recovered judgment against the said the Knox Insurance Company for the sum of five thousand one hundred and eighty-seven dollars, with interest at the rate of six per cent. per year until paid, and costs, which costs, with the costs of the execution hereafter mentioned, amount to the further sum of three dollars fifty-five cents; and that after the rendition of said judgment, on the 20th day of
19 October, 1851, execution on said judgment of writ of *fieri facias* was duly issued from the clerk's office of the said court to the sheriff of the said Knox county to levy the said judgment, money, interest, and costs, and was on the 4th day of March, 1852, by said sheriff duly returned: "No property, real or personal, found in my bailiwick to satisfy the within execution;" and that the said judgment remain in full force, unreversed and wholly unsatisfied, and due and owing. The said Samuel Gatty, by the consideration of the same court, at the same term thereof, on the same day in the said year, as above stated, recovered judgment against the said the Knox Insurance Company for the sum of five hundred and thirty-eight dollars sixty-three cents, with interest thereon from that date until

paid, and costs of suit; which costs, and the costs of the execution hereafter mentioned, amount to the further sum of three dollars forty-nine cents.

And that after the rendition of the said judgment, on the 20th day of October, 1851, execution on said judgment by writ of *fieri facias* was duly issued from the clerk's office of the said court to the sheriff of the said Knox county to levy the said judgment, interest, and costs; and was afterwards, on the 4th day of March, 1852, returned by said sheriff that there was no property found in his bailiwick, real or personal, to satisfy the said executions; and that the said judgments remain in full force, unreversed, wholly unsatisfied, and due and owing. The said Walstein S. Brown, by the consideration of the same, at the same term thereof, on the same day in the said
20 year, as above stated, recovered judgment against the said the Knox Insurance Company for the sum of thirteen hundred and sixty-two dollars and four cents, with interest from that date until paid, and costs; which said costs, with the costs of the execution hereafter mentioned, amount to the further sum of three dollars and fifty-five cents; and that after the rendition of the said judgment, on the 20th day of October, 1851, execution on said judgment by writ of *fieri facias* was duly issued from the clerk's office of the said court to the sheriff of said Knox county to levy the said judgment, moneys, interest, and costs; and was afterwards, on the 4th day of March, 1852, by said sheriff duly returned, that there was no property, real or personal, in his bailiwick to be found to satisfy the same, and that said judgment remain in full force, and unreversed, wholly unsatisfied, and due. And that the said Wesley Smead and William Collard, by the consideration of the same court, at the same term thereof, on the same day in the said year, as above stated, recovered judgment against the said the Knox Insurance Co. for the sum of six hundred and eight dollars and ninety-five cents, with interest from that date until paid, and costs of suit, which costs, with the costs of the execution hereafter mentioned, amount to the further sum of three dollars and forty-eight cents; and that afterwards, on the 20th day of October, 1851, execution on the said judgment by writ of *fieri facias* was duly issued from the clerk's office of the said court to the sheriff of said
21 Knox county to levy the said judgment money, interest, and costs; and was afterwards, on the 4th day of March, 1852, by said sheriff duly returned, that there was no property, real or personal, in his bailiwick found to satisfy the same, and that the said judgment remain in full force and unreversed, wholly unsatisfied, and due and owing.

And that said Edwin A. Carrington, by the consideration of the same court, at the same term thereof, on the 19th day of August, in the said year as above stated, recovered judgment against the said the Knox Insurance Company for the sum of sixteen hundred and seventeen dollars and forty-five cents, with interest from that date until paid, with costs of suit, which costs, with the costs of execution hereinafter mentioned, amount to the further sum of two dollars and sixteen cents; and that afterwards, on the 20th day of October, 1851, execution on the said judgment by writ of *fieri facias* was duly issued

from the clerk's office of the said court to the sheriff of the said Knox county to levy the said judgment money, interest, and costs; and was afterwards, on the 4th day of March, 1852, by said sheriff duly returned that there was no property found in his bailiwick, real or personal, to satisfy the same, and that the said judgment remain in full force, unreversed, wholly unsatisfied, and due and owing.

And that the said James Hewitt, John H. Roe, and Robert M. V. Kercheval, by the consideration of the same court, at the same term thereof, on the 20th day of August, in the said year as above
22 stated, recovered judgment against the said the Knox Insurance Company for the sum of four thousand four hundred and thirty-five dollars and sixty cents, with interest from that date until paid, and costs of suit; that afterwards, on the 20th day of October, 1851, execution on the said judgment by writ of *fieri facias* was duly issued from the clerk's office of said court to the sheriff of Knox county to levy the said judgment money, interest, and costs, which was afterwards, on the 4th day of March, 1852, duly returned by said sheriff, that he had levied the costs aforesaid and the costs of said writ, and also the sum of twenty-two dollars and sixty-six cents on account of said judgment money, and had paid over the same to the plaintiff's attorney, and that there was no more property, real or personal, in his bailiwick found to satisfy the said execution, and that the said judgment remain in full force, unreversed, and, except as to the said sum of twenty-two dollars and sixty-six cents paid on the said 4th day of March, 1852, wholly unsatisfied, due, and owing; and that the said Enoch Yost, by the consideration of the said the circuit court of Knox county, Indiana, at the February term thereof, and on the 23d day of February, 1852, recovered against the said the Knox Insurance Company the sum of three hundred and thirty-six dollars and ninety-six cents, with interest thereon from that date until paid, and costs, which costs, with the costs of the execution hereafter mentioned, amount to the further sum of one dollar and ninety cents; and that afterwards, on the 5th day of March, 1852, execution by
23 writ of *fieri facias* on the said judgment was duly issued from the clerk's office of the said court to the sheriff of said Knox county to levy the said judgment, interest, and costs; and was, on the 6th March, 1852, returned by the said sheriff that there was no property, real or personal, found in his bailiwick to satisfy the said execution, and that the said judgment remain in full force, unreversed, and wholly unsatisfied, due, and owing; and that at the same term of the said court, and on the same day in the said year as above stated, by the consideration of the said court, the said George W. Osborn recovered judgment against the said the Knox Insurance Company for the sum of two thousand and forty dollars, with interest from the said day, and costs of suit, which costs, with the costs of the execution hereafter mentioned, amount to the sum of one dollar and ninety cents; and that afterwards, on the 5th day of March, 1852, execution by writ of *fieri facias* on the said judgment was duly issued from the clerk's office of the said court to the sheriff of the said Knox county to levy the said judgment, money, interest, and costs, and was afterwards, on the 6th day of March, 1852, returned by the said

sheriff that there was no property, real or personal, in his bailiwick found to satisfy the same, and that the said judgment remain in full force, unreversed, and unsatisfied, due and owing; and at the same term of the said court, and on the same day in the said year, as above stated, the said Frederick Gillett, by the consideration of the same court, *recorded* judgment against the said the Knox Insurance
24 Company for the sum of one hundred and fifty-five dollars and sixty-one cents, with interest from the said day, and costs of suit, which costs, with the costs of execution hereafter mentioned, amount to the further sum of one dollar and ninety cents; and that afterwards, on the 5th day of March, 1852, execution on the said judgment by writ of *fieri facias* was duly issued from the clerk's office of the said court to the sheriff of the said Knox county to levy the said judgment money, interest, and costs, and was afterwards, on the 6th day of March, 1852, by the said sheriff duly returned that there was no property, real or personal, found in his bailiwick to satisfy the same, and that the said judgment remain in full force, unreversed, and unsatisfied, due and owing.

And the complainants further say that the said the Knox Insurance Company is entirely destitute of property of any sort subject to execution with which to satisfy any part of the money due by the said several judgments

And the complainants further say that they are informed and believe that the said several stockholders made defendants hereto, and their securities, justly owe the several sums of money in the several notes and bills above herein mentioned and set forth, with the interest thereon, and that the same should have been paid to and collected by the said the Knox Insurance Company, and the proceeds
25 thereof applied to the payment of the said judgment debts due to your orators; but that, from some cause to your orators unknown, the said the Knox Insurance Company have wholly neglected, and do yet neglect, to collect the same, or by other means of other means the said company have to pay the said judgments, and the complainants do not know that there are other creditors of the company, or that the said company are possessed of any other assets whatever than the said notes and bills of exchange above stated.

And your orators further state that they are informed and believe that payment of the said bills and notes has been repeatedly requested by the said company of the said defendants, stockholders as aforesaid, and their securities, and that such payment has been refused by said defendants, on the pretence that the said company procured and induced them, the said stockholders, respectively, to become such subscribers, as above stated, and to make the said notes and bills, by certain representations concerning the situation, prospects, and actual business of the said company, which representations the said stockholders assert were false.

But your orators say that they are advised by their counsel and believe that it is not material in any way to your orators, or to other persons who may have dealt with the said company, how and why said defendants, or any of them, became members of the said company; that they, the said defendants, did, by becoming such members,

give credit to said company, by means whereof your orators
26 were severally induced to deal with said company; and that sometime in the spring of 1850 an office of said company, as a branch, was organized at Jeffersonville aforesaid, and advertised as such in the newspapers there, and that of such branch office the said Simon Battorff, William F. Cullom, William Huges, Levi Sparks, and one James Kegion—who is not made a defendant because he is a resident of Louisville, Kentucky, and a citizen of Kentucky—were directors, and the said Simon Battorff was president, and the said George F. Savitz was secretary, and that all of said defendants acted in said office, in said branch office, throughout said year 1850, and that neither of the said defendants officers as aforesaid, nor any of said defendants, did not, at any time, by any newspaper notice or publications, or notice whatever, in any manner, attempt to inform their fellow-men of the facts by them now pretended concerning their connexion with the said company, or otherwise caution the public thereof.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective equal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, and perfect answer make to such of the several interrogatories hereinafter mentioned and set forth as by the note hereunder written they are respectively required to answer, that is to say:

27 1st. Whether the said Knox Insurance Company was organized and transacting business, under its act of incorporation, at Vincennes on or about the 12th day of February, 1850, and whether it then and there had authority, under its said act of incorporation, to receive further subscriptions to its capital stock?

2d. Whether the said Levi Sparks, Dutee Underwood, William Leutz, James Smith, John Dixon, Thomas M. Eddy, Hiram Maberry, Thomas W. Prather, Myrom Strattom, James Mitchell, William G. Armstrong, Benjamin F. Marsh, Benjamin Taylor, John S. Battorff, Athanasius Wathen, now deceased, Cynthia Maberry, Henry French, Peter Myers, Jacob Schwartz, Carter J. Logan, Thomas L. Dean, Sarah Maberry, the said Andrew S. White, Samuel P. Wisaker, William Huges, and Michael Wolfe, by the said firm name of A. S. White & Co., George W. Schwartz, George Schwartz, William Maberry, William F. Cullom, and Sophia Battorff, did or did not, respectively, become subscribers to the capital stock of the said the Knox Insurance Company, as hereinbefore stated?

3d. Whether the said defendants did not each of them make the notes, bills, and mortgages hereinbefore stated to have been made by them respectively, and for the consideration hereinbefore stated; and if not for that consideration, for what consideration; and where and when the same were made?

4th. Whether the said bills, notes, and mortgages were dated as hereinbefore stated, and due and payable as hereinbefore stated, and whether any payment has been made on any of said bills, notes, or mortgages; and if so, when and where and to whom made, and for what sum or sums?

28 5th. Whether the said assessments in said bill stated were made as in said bill stated; and if not so made, how, and when, and where, and for what sum, the same, if any, were made; and whether the defendants, subscribers as aforesaid, had, respectively, notice thereof; and when, and where, and how, if any?

6th. Whether all, and if not all, how much, of the money by the said several bills, notes, and mortgages promised and secured is now due and owing, with interest, as hereinabove stated; and if not so due and owing, what part thereof has been paid or discharged, and how and when?

7th. Whether said company have instituted any suit, and if so, what suit, and when and where, to enforce the collections of all or any of the said bills, notes, and mortgages?

8th. Whether the complainants are residents of the places and citizens of the States, respectively, hereinbefore stated?

9th. Whether the defendants are residents and citizens of the places and States hereinbefore mentioned?

10th. Whether the complainants are severally creditors of the said company, as hereinbefore stated, and when, and where, and how the said liabilities accrued?

11th. And whether the said Ogilvie, Angle & Co., Samuel Gatty, Walstein S. Brown, Smead & Co., Edwin A. Carrington, Joseph H. Conn, for the use of Anderson & Conn, Hewitt, Roe & Co., Enoch Yost, George W. Osborn, and Frederick Gillett recovered judgments, respectively, as is hereinbefore stated; and whether executions were issued as is hereinbefore stated; and whether said executions
29 were returned as hereinbefore stated, or, if not, what judgments were rendered for said complainants, respectively, and when, and where, and what executions were issued, and how the same was returned?

12th. Whether the said the Knox Insurance Company is or is not at this time entirely destitute of property of any sort subject to execution with which to satisfy any part of the money due by the said several judgments and executions; and if not so destitute, that said defendants severally state all they may know concerning said property so possessed by said company, and especially may describe it, and state fully what and where it is?

13th. Whether the said the Knox Insurance Company have made any attempt to collect the several sums of money due on the said several bills, notes, and mortgages, or any of them; and, if any, what, and where, and when, and the result thereof?

14th. Whether the payment of the said bills and notes have been repeatedly requested of the said defendants, the makers thereof; and whether such payment has been refused by the said defendants, stockholders, as aforesaid, and their securities, respectively?

15th. Whether an office of said the Knox Insurance Company, as a branch, was or was not organized at Jeffersonville aforesaid some time in the spring of 1850, and when; and who were the directors thereof, and who the president and secretary; and whether said office or branch was advertised in the newspapers at Jeffersonville

30 and elsewhere, as being duly constituted, or how, and in what newspapers, and from what time to what time, and by whose order said advertisements were made?

16th. Whether the said James Kegwin is or is not a resident of Louisville and a citizen of Kentucky; and if not, of what place he is a resident, and of what State a citizen?

17th. Whether any of said stockholders, or their sureties, defendants hereto, did, at any time, have any knowledge of the said newspaper advertisements, hereinbefore mentioned, of the said Jeffersonville branch office; and if so, which of them had or had not such knowledge?

18th. And whether any of said defendants at any time adopted any measures to inform the public of the pretences by them now set up against the validity of their subscriptions to said capital stock; and if so, what and when, and how communicated to the public?

And that the said the Knox Insurance Company may bring here unto court all the said bills, notes, and mortgages subject to the order of the court; and that an account may be taken of the severval sums of money due on the same, for principal and interest, from the said defendants respectively, parties thereto; and that the said several sums of money, so due, may be collected, and may be applied to the payment of the said several judgments, for the amount thereof, interest and costs, due, as aforesaid, to the said complainants, respectively, according to their respective rights, established by their respective diligence therein; and that, for that purpose, this court will take

31 such order to enforce the collection of the said several sums of money due on the said several bills, notes, and mortgages from the defendants, parties thereto, as may be just and equitable; and that your orators may have such other and further relief as may be just and equitable.

Your orators pray that process of subpœna may be issued, directed to the said the Knox Insurance Company, and Levi Sparks, Peter Myers, Dutee Underwood, and Aris, his wife; William Leutz, Thomas W. Prather, James Smith, John Dixon, and Emily C., his wife; Thomas M. Eddy, Benjamin S. Marsh, Hiram Maberry, Woods Maberry, Myrom Stratton, and Mary A., his wife; James Mitchell, George F. Savitz, William G. Armstrong, Benjamin Taylor, Thomas Taylor, John S. Battorff, William S. Cullom, Simon Battorff, Elizabeth Wathen, administratrix of the estate of Athanasius Wathen, deceased; Cynthia Maberry, Henry French, Jacob Schwartz, Carter J. Logan, John D. Woodburn, Thomas L. Dean, and Mary E., his wife; Sarah Maberry, William Hughes, Andrew S. White, Samuel Weseaker, and Michael Wolfe, George W. Schwartz, George Schwartz, John Battorff, Sophia Battorff, Samuel Patterson, and Samuel Battorff, all, except the said company, residents of Clark county, Indiana, to appear and answer this their bill of complaints, &c.

SAMUEL JUDAH,
*Complainants' Solicitor and Counsel.*

NOTE.—The said defendants are required to answer the several interrogatories set forth in the above bill as follows:

32 Each of the said several defendants is required to answer each of the interrogatories mentioned, from one to eighteen, inclusive, so far as each of said interrogatories relates to their own respective actions and doings touching the subject-matter of said several interrogations, respectively; and also so far as each of said defendants may have any knowledge, information, or belief concerning the subject-matter of said several interrogations.

SAMUEL JUDAH.

On the back of said bill was indorsed the following acknowledgment of service:

I hereby waive actual issuing and service of subpœna in the within suit in chancery on the Knox Insurance Company, and acknowledge service and consent to appear, as per rule of court.

C. M. ALLEN, *P. K. I. C.*

APRIL 1, 1852.

The clerk will issue, jointly, against the defendants, except the Knox Insurance Company, all of whom reside in and near Jeffersonville, Clark county, *returnable to the next rule day*, and make the memorandum on the subpœna, according to rule XII, for appearance.

SAMUEL JUDAH,
*Plaintiffs' Solicitor.*

When process was issued in these words, to wit:

The President of the United States of America to the marshal of the district of Indiana, greeting:

You are hereby commanded to summon the Knox Insurance Company, a corporation created by an act of the general assembly
33 of the State of Indiana, holding its principal office of business at Vincennes, in said State of Indiana, and a citizen of the State of Indiana; Levi Sparks, Peter Myers, Dutee Underwood, and Aris, his wife; William Leutz, Thomas W. Prather, James Smith, John Dixon, and Emily C., his wife; Thomas M. Eddy, Benjamin S. Marsh, Hiram Maberry, Woods Maberry, Myron Stratton, and Mary A., his wife; James Mitchell, George F. Savitz, William G. Armstrong, Benjamin Taylor, Thomas Taylor, John S. Battorff, William F. Cullom, Simon Battorff, Elizabeth Wathen, administratrix of the estate of Athanasius Wathen, now deceased; Cynthia Maberry, Henry French, Jacob Schwartz, Carter J. Logan, John D. Woodburn, Thomas L. Dean, and Mary E., his wife; Sarah Maberry, William Hughes, Andrew S. White, Samuel P. Wisaker, William Hughes, and Michael Wolf, the said Andrew, Samuel, William, and Michael being traders in partnership, under the firm of A. S. White & Co.; George W. Schwartz, George Schwartz, John Battorff, Sophia Battorff, Samuel Patterson, and Samuel Battorff, all of Clark county, and citizens of the State of Indiana, if they may be found in your district, to be and appear at the clerk's office of the circuit court of the United States of

America for the district of Indiana, before the judges thereof, at rules, at Indianapolis, on the first Monday in May next, then and there to answer the exigency of the bill of complaint of Adam Ogilvie, Horatio J. Angle, and William S. Angle, and John Angle, of Muscatine, and citizens of the State of Iowa, traders in partnership under the
34 firm of Ogilvie, Angle & Co.; Samuel Galty, of St. Louis, and a citizen of the State of Missouri; Wahtein S. Brown, of Cincinnati, and a citizen of the State of Ohio; Wesley Smead and William A. Cellard, of Cincinnati, and citizens of the State of Ohio, traders in partnership under the firm of Smead & Co.; Edwin A. Carrington, of St. Louis, and a citizen of the State of Missouri; Joseph H. Conn, of St. Louis, and a citizen of the State of Missouri, who sues for the use of the firm of Anderson & Conn, merchants of St. Louis, Missouri; John J. Rose, James Hewitt, and Robert M. V. Kercheval, of St. Louis, and citizens of the State of Missouri, traders in partnership under the firm of Hewitt, Rose & Co.; Enoch Yost, of Ypsilanti, and a citizen of the State of Michigan; Frederick Gillett, of Cincinnati, and a citizen of the State of Ohio, who sue for themselves, and such other creditors of the Knox Insurance Company, hereafter mentioned, as may make themselves parties hereto, filed in the clerk's office of said court; and have you then and there this writ.

Witness honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of
[L. S.] the United States for the district of Indiana, hereunto affixed, at Indianapolis, this 5th day of April, A. D. 1852.

HORACE BASSETT, *Clerk.*

The defendants will enter their appearance to the complain-
35 ants' bill of complaint in the clerk's office of said court on or before the first Monday in May next, or, in default thereof, the same will be taken *pro confesso.* April 5, 1852.

H. BASSETT, *Clerk.*

Which writ was duly delivered to the marshal, and by him returned indorsed as follows, to wit:

Served this process by copy upon Levi Sparks, Peter Myers, Dutee Underwood, William Leutz, Thomas W. Prather, James Smith, John Dixon, Emily C. Dixon, Benjamin S. Marsh, Hiram Maberry, Woods Maberry, Myrom Stratton, Mary A. Stratton, James Mitchell, George F. Savitz, William G. Armstrong, Benjamin Taylor, Thomas Taylor, John S. Battorff, William F. Cullom, Simon Battorff, Elizabeth Wathen, Cynthia Maberry, Henry French, Jacob Swartz, Carter J. Logan, John D. Woodburn, Thomas L. Dean, Mary E. Dean, Sarah Maberry, William Hughes, Michael Wolfe, George W. Schwartz, George Schwartz, Samuel Patterson, Samuel Battorff, on the 7th day of April, A. D. 1852, and served by copy upon John Battorff on the 8th day of April, A. D. 1852; Andrew S. White and Samuel P. Wisaker not found in my district; Aris Underwood and Sophia Battorff, deceased; and served by copy on the 14th day of April, A. D. 1852, upon Thomas M. Eddy.

S. MEREDITH, *Marshal.*
O. FOOTE, *Deputy.*

And afterwards, to wit: at the May rules of said court, come now the complainants, by their solicitor, and the defendants fail to plead, answer, or demur to complainants' bill of complaint herein; and
36 thereupon, on motion of complainants, it is ordered by the court that the default be entered, and day is given May 3, 1852.

And afterwards, to wit: at the circuit court aforesaid, begun, continued, and holden at Indianapolis, in said district, on the 31st day of May, in the year 1852, that being the 13th judicial day of the May term of said court, before the Hon. Elisha M. Huntington, judge of said district of Indiana.

On motion of complainants, by Mr. Judah, their solicitor, it is ordered that said defendant, the Knox Insurance Company, file in the clerk's office of this court all the securities named in the bill in sixty days; and thereupon, on motion of Mr. Crawford, attorney for defendants, the rule for answer is extended to the first rule day of September, and this cause is continued.

And afterwards, to wit: at the September rules of said court, come now the complainants, by Samuel Judah, esq., their solicitor, and the defendants having failed to answer to the bill of complaint herein in discharge of the order heretofore entered against them, but make default, it is therefore, on motion of the complainants, and by reason of the default aforesaid, ordered, adjudged, and decreed that the said bill of complaint and the matters therein contained, as the same are therein set forth, be held and taken as and for confessed and
37 true against the said defendants, on whom the writ of subpœna was served, and be decreed accordingly.

SEPTEMBER 2, 1852.

And afterwards, to wit: on the 26th day of September, of said year, the defendants now come and file their demurrer to complainants' bill of complaint herein in these words, to wit:

The demurrer of Levi Sparks, Peter Myers, Dutee Underwood, and Aris, his wife; William Leutz, Thomas W. Prather, James Smith, John Dixon, and Emily C., his wife; Thomas M. Eddy, Benj. S. Marsh, Hiram Maberry, Woods Maberry, Myrom Stratton, and Mary A., his wife; James Mitchell, Geo. F. Savitz, William G. Armstrong, Benj. Taylor, Thos. Taylor, William F. Cullom, Simon Battorff, Elizabeth Wathen, administratrix of A. Wathen, deceased; Cynthia Maberry, Henry French, Jacob Schwartz, Carter Logan, Thos. L. Dean, and Mary E., his wife; Sarah Maberry, William Hughes, Andrew S. White, Samuel P. Wisaker, William Hughes, and Michael Wolfe; George W. Schwartz, George Schwartz, Sophia Battorff, Samuel Patterson, and Samuel Battorff, to the bill of complaint of Adam Ogilvie and others, exhibited in the circuit court of the United States for the district of Indiana against the Knox Insurance Company, these demurrants and others.

These defendants demur to said bill, and for cause of demurrer show that the complainants have not, in said bill, stated such a case

as entitles them to any of the discovery sought or relief prayed for by said bill. Whereupon these defendants demand the judg-
38 ment of the court whether they shall be compelled to make any further answer, &c.

DEWEY & CRAWFORD, *p. d.*

In my opinion this demurrer is well founded in law.

CHARLES DEWEY, *p. d.*

STATE OF INDIANA,
*Clark County*, ss.

Levi Sparks makes oath and says he is one of the within defendants, and the within demurrer is not intended for delay merely; and further says not.

LEVI SPARKS.

Subscribed and sworn to before me, Thomas Wilson, notary public in and for the county and State aforesaid, this 18th day of September, 1852.

THOS. WILSON, *Notary Public.*

And day is given.

And afterwards, to wit: at the circuit court aforesaid, begun and holden at the place aforesaid on the 24th day of November, in the year 1852, that being the ninth judicial day of the November term of said court, before the Hon. Thomas Drummond, judge by special appointment.

At this time the said the Knox Insurance Company, by Cyrus M. Allen, its president, in pursuance of the order of this court herein heretofore made, brought into court and delivered to the clerk, subject to the order of the court, the following notes, bills, and mortgages, parcel of the securities set forth in the complainants' bill, viz:

Bill of exchange; Simon Battorff, drawer, Levi Sparks,
39 acceptor; October 9, 1830; at 30 days, for..... $100 00
Note on demand; Levi Sparks, drawer, Peter Myers, guarantor; February 23, 1850, for..... 900 00
Note on demand; Duten Underwood; April 6, 1850..... 900 00
Mortgage of Underwood and wife to secure above note.
Note on demand; Wm. Leutz, drawer, Thomas W. Prather, guarantor; May 6, 1850, for ..... 900 00
Note on demand; John Dixon, drawer; March 16, 1850, for 450 40
Mortgage of Dixon and wife to secure above note.
Note on demand, with interest; May 4, 1850; Thomas M. Eddy, drawer ..... 100 00
Note on demand; Thomas M. Eddy, drawer, Woods Maberry, guarantor; dated May 4, 1850, for..... 900 00
Bill of exchange; Hiram Maberry, drawer, Wood Maberry, acceptor; at 30 days; dated October 4, 1850, for..... 500 00

Note on demand; Hiram Maberry, drawer, Wood Maberry, guarantor; dated February 23, 1850, for ..... $2,250 00
Note on demand; Wood Maberry, drawer, Hiram Maberry, guarantor; dated February 23, 1850, for..... 2,250 00
Guarantor, dated; Thomas W. Prather, drawer, Wm. Leutz, guarantor; dated May 7, 1850, for..... 900 00
Guarantor, dated; Myrom Stratton, drawer; dated June, 1850 ..... 450 00
Mortgage of Stratton and wife to secure the above note.
Note on demand; James Mitchell, drawer, George F. Savitz, guarantor; dated May 10, 1850, for..... 900 00
Bill of exchange; Benjamin F. Marsh, drawer, Wm. G. Armstrong, acceptor; at 30 days; dated September 30, 1850, for..... 200 00
Note on demand; Wm. G. Armstrong, drawer, Benj.
40 F. Marsh, guarantor; dated May 4, 1850, for..... 1,800 00
Note on demand; Benjamin Taylor, drawer, Thomas Taylor, guarantor; dated May 18, 1850, for..... 900 00
Note on demand; Athanasius Wathen, drawer, James Kirgwin, guarantor; dated February 3, 1850, for ..... 4,500 00
Bill of exchange; James Kirgwin, drawer, Athanasius Wathen, acceptor; at 30 days; dated September 28, 1850, for..... 500 00
Note on demand; Henry French, drawer, Peter Myers, guarantor; dated March 9, 1850, for..... 1,800 00
Note on demand; Peter Myers, drawer, Henry French, guarantor; dated March 9, 1850, for..... 1,800 00
Bill of exchange; Henry French, drawer, Peter Myers, acceptor; at 30 days; dated September 30, 1850, for..... 400 00
Note on demand; Jacob Schwartz, drawer, James Smith, guarantor; dated May 7, 1850, for..... 900 00
Note on demand; Carter and Logan, drawers, John D. Woodburn, guarantor; dated May 4, 1850, for..... 900 00
Bill of exchange; John Mitchell, drawer, William Logan, acceptor; at 30 days; dated October 7, 1850, for..... 100 00
Note on demand; Cynthia Maberry, drawer, W. and H. Maberry, guarantors; dated May 2, 1850, for..... 440 00
Note on demand; Sarah Maberry, drawer, W. and H. Maberry, guarantors; dated May 2, 1850, for..... 450 00
Note on demand, with interest; W. and H. Maberry, drawers; dated May 2, 1850, for..... 100 00
Note on demand; Thomas L. Dean, drawer; with interest from date; dated May 2, 1850, for..... 100 00
Note on demand; Thomas L. Dean, drawer; dated May 2, 1850 ..... 900 00
41 Mortgage of Dean and wife to secure above note.
Note on demand; A. S. White & Co., drawers, William Hughes, guarantor; dated February 23, 1850, for..... 3,600 00
Note on demand; George W. Schwartz, drawer, George Schwartz and Simon Battorff, guarantors; dated May 2, 1850..... 900 00

Note on demand; George Schwartz, drawer, George W. Schwartz, guarantor; dated April 11, 1850, for..... $900 00
Note on demand; William F. Cullom, drawer, Simon Battorff and John S. Battorff, guarantors; dated February 22, 1850, for..... 1,800 00
Bill of exchange; S. H. Patterson, drawer, William F. Cullom, acceptor, at 30 days; dated September 28, 1850, for. 200 00

And thereupon it is ordered that the clerk receive the same, and hold them subject to the order of the court.

And on the same day, and at the same time aforesaid, come now the parties; and thereupon R. Crawford, esq., appearing for all the defendants, except the Knox Insurance Company, moves the court, upon affidavit filed, to set aside the default at rules as to said defendants, and ask leave to withdraw demurrer filed; and thereupon the court, being sufficiently advised in the premises, grant said motion, on payment of all costs accrued since the first Monday of September, as to all said defendants except the Knox Insurance Company, and order that said default be set aside, and that said defendants have leave to refile said demurrer, and day is given the parties.

And on the eleventh judicial day of the same term as aforesaid come the parties—the demurrer to said bill, as refiled, having been submitted and argued before the court at chambers—and the court being sufficiently advised, overrule said demurrer.

42

And afterwards, on the 13th day of the same term as aforesaid, come the parties, and the following defendants, to wit: Levi Sparks, Peter Myers, William H. Cattom, William Leutz, James Mitchell, D. Underwood, Thomas H. Prather, James Smith, Dixon and wife, B. F. Marsh, Hiram Maberry, W. Maberry, Stratton and wife, W. G. Armstrong, B. Taylor, Mrs. Wathen, C. and S. Maberry, H. French, Jacob Schwartz, William Logan, T. H. Dean, A. S. White & Co., G. W. Schwartz, George Schwartz, and S. Battorff, come and file their several answers.

The answer of Levi Sparks to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Sparks and others.

Said Sparks answers as follows:

To 2d interrogatory. That he did not subscribe himself, nor did he authorize any person to subscribe on his account, for stock in said insurance company, unless his giving his note and *and* bills, as hereinafter mentioned, was in law a subscription for such stock, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, and being so induced, he gave his note and accepted two bills, as alleged in plaintiffs' bill; but he did so wholly in consequence of said fraud, and he denies that there was any valid consideration for said note or bills, or that he is legally bound to pay any part of them.

43

To 4th interrogatory. That said note and bills were dated, due and payable, as stated in plaintiffs' bill, and no payment has been made on said note or said last bill.

To 5th interrogatory. That he admits such calls of payment on said stock were made, as alleged in plaintiffs' bill; and he received one, and he is not certain but two, notices of such calls, of 10 per cent. each, by mail, and he received no more, and does not recollect the date of the one or two he did receive.

To 6th interrogatory. That his said note and last bill are wholly unpaid, and, if valid, they and all interest thereon are now due.

To 14th interrogatory. That the payment of his said note and last bill have not been demanded of him in any other way than by the notice mentioned by him in his answer to 5th interrogatory.

He has heard the answer of this co-defendant Collum carefully read, and he says the false and fraudulent representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan to said Sparks; but he is informed and believes said Carnan made substantially the same representations to Samuel H. Patterson, Simon Battorff, and Woods Maberry, and he alleges that said Patterson, Battorff, and Maberry repeated the same to said Sparks just before he gave said note and accepted said first bill. 44 Said Carnan, when he made said representations, was acting as the agent of said insurance company. Said Sparks fully believed said representations, and had not then the means of knowing them to be false; and he was induced by them to make said note and accept said bills, which he would not have done but for said false representations. With the above *with the above* qualification, and excepting the responses therein to the 2d, 3d, 4th, 5th, 6th, and 14th interrogatories, said Sparks adopts all of said Collum's answer as his own, and in all respects applies its language to his own part of this case, and alleges that the whole of said answer (with the above qualification and exceptions) is true as to himself and his part of the case.

LEVI SPARKS.

R. CRAWFORD.

STATE OF INDIANA,
*Clark County, ss.*

Said Levi Sparks makes oath and says his above answer, as far as stated of his knowledge, is true, and as far as stated on information and belief, he believes to be true.

LEVI SPARKS.

Subscribed and sworn to this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of Peter Myers to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court of the district of Indiana, against the Knox Insurance Company, said Myers and others.

Said Myers answers as follows:

To 2d interrogatory. That he did not subscribe, nor authorize

45 any person to subscribe, for stock in said insurance company, unless his giving the note and bills, as hereinafter mentioned, was in law such a subscription, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, and being so induced, he gave his note and bills, as alleged in plaintiffs' bills, but he did so wholly in consequence of said fraud, and he denies that there was any valid consideration for said note and bills, and that he is legally bound to pay any part of them.

To 4th interrogatory. That said note and bills were dated, due and payable, as alleged in plaintiffs' bill, and no payment has been made on said note or said last bill.

To 5th interrogatory. That he admits such calls of payment on said stock were made as alluded in plaintiffs' bill, and that he received by mail a notice of one such call of 10 per cent., and he believes he received but one, and he does not recollect the date of it.

To 6th interrogatory. That his said note and last bill are wholly unpaid, and if valid, they and all interest thereon are now due.

To 14th interrogatory. That payment of said note on last bill has not been demanded, otherwise than by said notice mentioned in answer to 5th interrogatory.

He has heard the answer of his co-defendant Collum carefully read, and excepting the responses therein to the 2d, 3d, 4th, 5th, 6th, and 14th interrogatories, said Myers adopts all of said answer as his own, both the part which is responsive to said bill and that
46 which is defensive only, and in all respects he applies the language of it to his own part of this suit, and alleges that the whole of it (except as aforesaid) is true, as to himself and his part of this suit.

P. MYERS.

R. CRAWFORD, *Solicitor.*

STATE OF INDIANA,
*Clark County*, ss.

Said Peter Myers makes oath and says his foregoing answer, so far as stated in his knowledge, is true, and so far as stated on information or belief, he believes to be true.

P. MYERS.

Subscribed and sworn to this 19th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of William F. Collum to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Collum and others.

Said Collum, saving, &c., answers and sets forth as follows:

1st. He admits that said insurance company was pretended to be organized under its charter at Vincennes, on or before February 12, 1850, and it professed to do business as such insurance company, and

if duly organized, he admits it had authority, under its charter, to receive further subscriptions to its stock, but he does not admit said insurance company was legally organized, or could legally do any business under its charter, because he is informed and believes
47 there had not been at the time of said pretended organization and doing business, five hundred shares of its stock subscribed for and five per cent. paid on each of said shares.

2d. He did not subscribe himself, nor did he authorize any other person to subscribe on his account, for any stock in said insurance company, unless his giving the note and bills, as hereinafter mentioned, was in law a subscription for such stock, which he is advised it was not.

3d. He was fraudulently induced, and being so induced, he did give his note, with the security and accepted bills, in favor of said insurance company, for the amounts and of about the dates alleged in the plaintiffs' bill, but he did so wholly in consequence of said fraud, the particulars of which are hereinafter stated; and he denies that there was any valid consideration for said note and bills, or that he is legally bound to pay any part of them.

4th. Said note and bills were dated, due and payable, as alleged in the plaintiffs' bill, and no payment has been made thereon, except said first bill was paid by said second one, and the interest was paid on said first bill from its date till the date of the second one in cash.

5th. He does not know, but is informed and admits that such calls of payment on said stock were made at the times and in the
48 manner alleged in plaintiffs' bill, and he received by mail a notice of one such call of ten per cent., and he believes he received but one, and he does not recollect the date of it.

6th. His said note and said second bill are wholly unpaid, and if he is legally bound to pay them, they, and all the interest thereon, are now due.

7th. He has no knowledge or information of any suit having been brought by said insurance company to collect said note or bill.

8th. He has no knowledge of what places or States the plaintiffs, or any of them, are residents or citizens, nor has he any information on that subject, except the statements of the plaintiffs' bill.

9th. He is a citizen of the State of Indiana and a resident of Jeffersonville.

10th. He has no knowledge, information, or grounds of belief, except the statements of the plaintiffs' bill, whether they, or any of them, are creditors of said insurance company, or how, where, or when they became such.

11th. He has no knowledge, information, or grounds of belief, except the statements of the plaintiffs' bill, whether they, or any of them, obtained such judgments as are alleged, or any others, nor what executions, if any, were issued thereon, nor how the same were returned.

12th. He has no knowledge or information of any property of said insurance company subject to execution.

49 13th. He has no knowledge or information of any suit or attempt to enforce the payment of said note and bill.

14th. The payment of said note and bill has been requested of him

in no other way and at no other time than by the notice mentioned in his answer to 5th interrogatory.

15th. He is informed and believes that an office or branch of said insurance company was pretended to be organized at Jeffersonville some time in the spring of 1850, and that it pretended to do business during the remainder of said spring and the summer of that year only, and that James Kegwin, William Hughes, Simon Battorff, and Levi Sparks were pretended to be directors, and said Simon Battorff vice-president, and George F. Savitz secretary thereof. He has no knowledge or information that the organization of said pretended branch was advertised in any newspaper, or by any manuscript advertisement, nor of any order therefor; but he is advised that the charter of said insurance company did not authorize the organization of said branch, and therefore he denies that it was legally organized.

16th. Said James Keigwin is a citizen of the State of Kentucky, and a resident of the city of Louisville.

17th. Said Collum, as is stated above, has no knowledge or information of any such advertisement, nor can he say whether any of the other defendants or their sureties have any knowledge or information thereof.

18th. He did not, and he believes the other defendants did
50 not, adopt any means to inform the public of the fraud committed as aforesaid in procuring said notes and bills until about the first of September, 1850, because he believes the other defendants (except said insurance company) did not until then know that the representations made to them by the agent of said insurance company, and which induced them to give said notes and bills, were false and fraudulent. As soon as he and (as he believes) the other defendants (except said insurance company) were fully informed of said fraud, but they they determined to have nothing further to do with said insurance company, and to not pay said notes and bills; of all which the president and secretary were formally notified by letter about the 25th day of June, 1851, and he is informed and believes that said Savitts so informed them in substance about September, 1850; and their said determination was immediately acted upon and freely spoken of by said Collum, and he believes by the other defendants, (except said insurance company,) and was immediatly thereafter generally known in and around Jeffersonville. He was not fully informed of the circumstances of said fraud until October, 1850.

And by way of defence to said suit, said Collum alleges that just before he gave said note, accepted said first bill, Robert N. Carnan, an agent of
said insurance company, came to Jeffersonville to procure persons
51 there to give notes and bills for stock in said insurance company; and in order to induce said Collum to give his said note and accept said first bill for such stock, said Carnan, as such agent, then and there falsely and fraudulently said and represented to said Collum, and in his hearing, that stock in said insurance company to the amount of seventy-five thousand dollars had then been subscribed for at Vincennes, and on the Wabash river, and all of said amount had then been paid or secured as the charter of said insurance company required; said Collum did not then know, nor then have the means of knowing

to the contrary of said representations, and he fully believed them to be true, and with that belief he gave his said note, and accepted said two bills for stock in said insurance company; and if he had not fully believed said representations he would not have given said note nor accepted said bills, or either of them. At the time said representations were so made and said note given, and said first bill accepted, there had not been more than twenty-five thousand dollars of stock in said insurance company subscribed for and paid and secured as said charter required at Vincennes, on the Wabash river, which said Carnan then well knew. Said Carnan also at and just before said Collum made his said note and accepted his said first bill, represented to him that said insurance company then had forty thousand dollars of funds on hand, mostly in eastern exchange, which they could not dispose of at Vincennes, and they wished to get stockholders at Jeffersonville,
52 so as to have an officer of said insurance company there, and they would then send those funds there to be sold and used. Said Collum did not then know, and had no means of knowing to the contrary of said representations, but he believed it, and it was a strong inducement with him to make his said note and accept his said bills; yet he is now informed and believes said representation was grossly false, and that said insurance company did not at that time have, and had not at any time had that sum, or anything like that sum of money on hand, and mostly in eastern exchange, which they could not dispose of at Vincennes.

And said Cullom further alleges that, as he is informed and believes, said Jacob Pea, William J. Hibbard, John Willadox and Horace E. Peck, Cyrus M. Allen, Charles Graeter, Redman Pinkstaff, William Burtch, Isaac Mass, Charles Dawes, J. S. & W. J. Wise, R. Y. Caddington, of Knox county, Godlove S. Orth, Thomas C. Bainbridge, Peter P. Bailey, E. M. Burt, Thomas P. Anderson, of Tippecanoe county, Thomas J. Brooks, M. J. Sherman, William E. Niblack, Thomas M. Gibson, Aaron Haughton, Richard Neave, James R. Bryant, Henry J. Johnston, of Martin county, David Wallace, of Marion county, and Vincent S. West, of Pike county, and all in the State of Indiana, had, before the alleged indebtedness to the plaintiffs, or any of them, accrued, subscribed for stock in said insurance company, and that at and before the commencement of this suit they were severally
53 indebted to said insurance company for all or a part of the stock so subscribed for by them; but said Collum does not know the amount of such stock so subscribed for by any of said persons, nor how much, or whether any of it had been paid or secured as said charter required. He alleges that each and all of said persons are necessary parties to this suit, and that it ought not to be further prosecuted without their being made parties to it.

R. CRAWFORD, *Solicitor.*

STATE OF INDIANA,
*Clark County, ss.*

Said William F. Cullom makes oath and says his foregoing answer, so far as stated on his own knowledge, is true, and so far as stated on information and belief, he believes it to be true.

W. F. CULLOM.

Subscribed and sworn to this 16th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of William Leutz to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Leutz and others. Said Leutz answers as follows:

To 2d interrogatory. That he did not subscribe nor authorize any person to subscribe for stock in said insurance company,
54 unless his merely paying the money and giving his note, as alleged in plaintiffs' bill, was in law a subscribing for such stock, which he is advised was not.

To 3d interrogatory. That he was fraudulently induced, and being so induced, he paid the $100 and gave his note, as alleged in plaintiffs' bill, but he did so wholly in consequence of said fraud; and he alleges there was no valid consideration for said note, and that he is legally bound to pay it.

To 4th interrogatory. That his said note was dated, due and payable, as alleged in plaintiffs' bill, and some of it has been paid.

To 5th interrogatory. That he admits such calls of payment on said stock were made, as alleged in said bill, and he received but one notice only for a ten per cent. call, and does not remember the date of it.

To 6th interrogatory. That his said note is wholly unpaid, and if valid, it and all interest on it are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana, and a resident of Clark county.

To 14th interrogatory. That payment of his said note has not been requested of him in any other way than by said notice mentioned in his answer to 5th interrogatory.

He has heard the answer of his co-defendant Collum carefully read, and he says the false representations therein alleged to
55 have been made by said Carnan to said Collum were not made by said Carnan directly to said Leutz, but he is informed, and believes, that said Carnan, when acting as the agent of said insurance company in procuring such notes for stock, made substantially the same representations to said Savitts, and that said Savitts, afterwards, when acting as the agent of said insurance company in procuring said Leutz to give his said notes, and just before the same was given, repeated the same representations to said Leutz; and said Savitts, as such agent, and at the same time, exhibited to said Leutz a paper purporting to be certified by the secretary of said insurance company, under its seal, on the 22d day of April, 1850, which falsely stated the liabilities of said insurance company, on the 31st of March, 1850, were only $1,387 84, and that her profits were over $25,000; said Leutz is since informed, and believes, that both the statements of said paper, (which is filed in this suit as exhibit Z,) and said representations of said Carnan were grossly false; but at the time said paper was shown to said Leutz, and said representations were repeated to him, he had no means of knowing their falsity, and he fully believed them,

and was wholly induced by them to give said note, and would not have given it but for them and his belief of them. With the above qualifications, and excepting the responses to 2d, 3d, 4th, 5th, 6th, 9th and 14th interrogatories, said Leutz adopts the whole of said Collum's answer as his own, and applies the language of it to his part of this case, and asserts that it is all true as so applied.

56

WILLIAM LEUTZ.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Floyd County, ss.*

Said William Leutz makes oath and says his foregoing answer, as far as stated on his knowledge, is true, and as far as stated on information or belief, he believes it true.

WILLIAM LEUTZ.

Subscribed and sworn to this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of James Mitchell to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Mitchell and others. Said Mitchell saving and answering as follows:

To 3d interrogatory. That he was fraudulently induced, and being so induced, he did give his note for the amount and with the security stated in plaintiffs' bill, and he also procured John Mitchell to draw a bill of about the same date for $500, payable to said insurance company, and accepted by George F. Savitts, and which included $100 on account of said James Mitchell, but he did so wholly in consequence of said fraud, the particulars of which are hereinafter stated; and he denies that there was any valid consideration for said note or said bill, or that he is legally bound to pay any part of them.

57

To 4th interrogatory. That said note was dated due, and payable, as stated in plaintiffs' bill and said accepted bill, as his answer to 3d interrogatory, and no payment has been made thereon.

To 5th interrogatory. That he admits such calls of payment on said stock were made as alleged in plaintiffs' bill, and he does not think he received by mail any notice of such call.

To 6th interrogatory. That his said note and bill are wholly unpaid; and if valid, they and all the interest thereon are now due.

To 14th interrogatory. That the payment of his said note and bill have never been requested of him.

Said Mitchell has heard the answer of his co-defendant Collum carefully read, and he says the false and fraudulent representations therein alleged to have made by said Carnan to said Collum, were not made by said Carnan to said Mitchell; but he is informed and believes that said Carnan, when so acting as the agent of said insurance company, made substantially the same representations to said Savitts, and he alleges that the same were repeated to him by said Savitts when acting as agent of said insurance company at the time and

just before said Mitchell gave said note and drew said bill; and said Savitts, as such agent, at the same time, exhibited to said Mitchell
58 a paper purporting to be certified by the secretary of said insurance company, under its seal, on the 22d day of April, 1850, which falsely stated the liabilities of said insurance company, to have been on the 31st day of March, 1850, only $1,387 84, when, in fact, her liabilities were at that date many times greater than that amount, to wit, not less than $———, as said Mitchell is informed and believes, and he is now also informed and believes said secretary well knew said statement was not correct when it was made. Said paper is made a part of this answer, and filed with it as Exhibit Z. Said Mitchell fully believes said representations and the statement of said paper, and had not then the means of knowing their falsehood, and he was induced by them to make said note and have said bill drawn and accepted, which he would not have done had it not been for said false representations, and the false statements of said paper. With the above qualifications, and excepting said Collum's responses to the 4th, 5th, 6th, and 14th interrogatories, said Mitchell adopts all of said answer of Collum as his own, and in all respects applies the language of it to his own part of this case, and alleges that the whole of said answer (with the qualification and exceptions aforesaid) is true as to himself and his part of this case.

JAMES MITCHELL.

R. CRAWFORD, *Solicitor.*

STATE OF INDIANA, *Clark County, ss.*

Said James Mitchell makes oath and says his foregoing an-
59 swer, so far as stated of his own knowledge, is true, and so far as stated on information or belief, he believes it to be true.

JAMES MITCHELL.

Subscribed and sworn to this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOMAS L. SMITH.

The answer of Dutee Underwood to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Underwood and others.

Said Dutee Underwood for himself answers as follows:

To 2d interrogatory. That he did not subscribe nor authorize any person to subscribe for stock in said insurance company, unless his paying the money, giving the note, and procuring a bill to be accepted as hereinafter mentioned, were in law such a subscribing, which he is advised they were not.

To 3d interrogatory. That he was fraudulently induced, and being so induced, he gave such note and mortgage, as alleged in the plaintiffs' bill, and he paid fifty dollars only (not $100) as there alleged; and at his request, George F. Savitts accepted a bill for $500, payable to said insurance company, which included fifty dollars on ac-

count of said Dutee, and was part of the $100 he promised to pay under the fraudulent inducement aforesaid.

To 4th interrogatory. That his said note was dated, due and payable, as alleged in plaintiffs' bill; he believes said bill accepted by
60 said Savitts was of the same date, but don't recollect when it was payable. No payment has been made on said note, and he is informed and believes none has been made on said bill.

To 5th interrogatory. That he admits such calls for payment on said stock were made as alleged in plaintiffs' bill, and he received by mail two or three notices thereof, but not any more than three, and he does not recollect their date, nor the amounts of the calls.

To 6th interrogatory. That his said note is wholly unpaid; and if valid, said bill for $500 is now due, so far as said $50 and interest on it are concerned.

To 9th interrogatory. That he is a citizen of Indiana, and a resident of Jeffersonville.

To 14th interrogatory. That payment of his said note has been demanded in no other way than by the notices mentioned in his answer to 5th interrogatory. He has no knowledge or information of any request for said bill to be paid.

He has heard the answer of his co-defendant Collum carefully read, and he says the false representations therein alleged were not made by said Carnan directly to said Dutee, but he is informed and believes that said Carnan, when acting as the agent of said insurance company, in endeavoring to obtain notes and bills for stock at said Jeffersonville, made substantially the same representations to said Savitts; and he alleges that afterwards said Savitts, when acting as the agent of said insurance company, in obtaining said note and
61 money of said Dutee, repeated the same false representations to him; said Dutee did not then know the falsity of said representations, but fully believed them to be true; and it was wholly in consequence of his believing them to be true that he paid said $50, gave his said note, and procured said Savitts to include $50 on his account in his said bill; which things he would not have done but for said false representations, and his belief of them. In September or October, 1850, (the precise time he does not recollect,) he first became fully informed of the gross falsehood of said representations.

With the above qualifications, and except the responses to the 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said Dutee adopts the answer of said Collum as his own, and applies the language of it to his part of this case, and alleges that it is true as to him and his part of this case. His wife, Aris Underwood, died December 24, 1851.

DUTEE UNDERWOOD.

R. CRAWFORD, *Solicitor, p. d.*

STATE OF INDIANA,
*Floyd County, ss.*

Said Dutee Underwood makes oath and says his foregoing answer, so far as stated on his own knowledge, is true, and so far as stated on information or belief, he believes it to be true.

DUTEE UNDERWOOD.

Subscribed and sworn to this October 13th, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

62 The answer of Thomas W. Prather to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court against the Knox Insurance company, said Prather and others. Said Prather answers as follows:

To 2d interrogatory. That he did not subscribe nor authorize any person to subscribe *to subscribe* for stock in said insurance company, unless his giving the note and paying the $100, stated in the bill of complaint, was in law such a subscribing, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, and in consequence thereof, he gave the note and paid the $100, stated in the bill of complaint; but he denies that there was any consideration for said note, or that he is legally bound to pay any part of it.

To 4th interrogatory. That his said note was dated, due and payable, as stated in complainants' bill, and no part of it has been paid.

To 5th interrogatory. That he admits such calls as are stated in bill of complaint were made for payment on said stock, and he thinks he received by mail one notice of two such calls of ten per cent. each, and he does not believe he received more than one, and does not recollect the date of that.

To 6th interrogatory. That his said note is wholly unpaid; and if valid, it and all interest on it are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana, and a resident of Clark county.

63 To 14th interrogatory. That payment of his said note has not been requested in any other way than by the notices stated in his answer to 5th interrogatory. He has heard the answer of his co-defendant Collum carefully read, and he says the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan to said Prather directly, but he is informed and believes that said Carnan made substantially the same representations when acting as the agent of said insurance company in procuring such notes to be given for said stock at Jeffersonville to George F. Savitts, and that he, Savitts, afterwards, when acting also as the agent of said insurance company in procuring said Prather to give his said note, and just before it was given, repeated the same representations to said Prather; and said Savitts at the same time, while acting as such agent, either showed said paper filed in this suit as Exhibit "Z," to said Prather, or stated to him the contents of it. (Said Prather is not certain which.) Said Prather did not then know the falsity of said representations made by said Carnan and repeated to him, and of the statements of said paper; "Z," but he believed all of them, and wholly in consequence thereof gave his said note, which otherwise he would not have done. He has since, to wit: about September or October, 1850, discovered that said representations and said paper "Z" are both grossly false. With the above qualifications, and except the answers therein to 2d, 3d, 4th,

5th, 6th, 9th, and 14th interrogatories, said Prather adopts all
64 the answer of said Collum as his own, and alleges that its language is true as applied to him and his part of this case.

THOS. W. PRATHER.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Clark County, ss.*

Thomas W. Prather makes oath and says his foregoing answer, so far as stated on his knowledge, is true, and so far as stated on his information or belief, he believes it to be true.

THOMAS W. PRATHER.

Sworn to this 16th of October, 1852, before me, a judge of the supreme court of Indiana.

THOMAS L. SMITH.

The answer of James Smith to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Smith, and others. Said Smith answers as follows:

To 2d interrogatory. That he did not subscribe nor authorize any person to subscribe for any stock in said insurance company, unless his paying the money and giving the note, as hereinafter mentioned, was in law a subscription for such stock, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, and being so induced, he gave his note and paid said $100, as alleged in plaintiffs' bill, but he denies that there was any valid consideration
65 therefor, or that he is legally bound to pay said note.

To 4th interrogatory. That said note was dated, due and payable, as alleged in plaintiffs' bill, and no payment has been made on it.

To 5th interrogatory. That he admits such calls for payment on said stock were made as are alleged in plaintiffs' bill, and that he received one notice only of such a call by mail, but does not remember the date of it.

To 6th interrogatory. That his said note is wholly unpaid; and if valid, it and all interest on it is now due.

To 9th interrogatory. That he is a citizen of Indiana, and a resident of Clark county.

To 14th interrogatory. That payment of this said note has not been requested in any other way than by the notice mentioned in his answer to 5th interrogatory.

He has heard the answer of his co-defendant Collum carefully read, and says the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan to said Smith directly, but were, as he is informed and believes, made by said Carnan as such agent to said Savitts, and afterwards the same were repeated to said Smith by said Savitts when acting as the agent of

said insurance company in procuring said Smith to give said note and pay said $100; and just before the same were given and paid,
66 and said Savitts also at the same time, while acting as such agent as aforesaid, exhibited to said Smith a paper purporting to have been certified by the secretary of said insurance company, under its seal, on the 22d day of April, 1850, and which falsely stated that the liabilities of said insurance company on the 31st day of March, 1850, were only $1,387 84, and the profits of said insurance company were over $25,000, when, in fact, her liabilities were at that time (as said Smith is now informed and believes) many times greater than that amount, but he is not informed what the actual amount was, and her profits were very much less than $25,000, and if anything at all, very little. Said paper is filed in this suit as exhibit "Z." Said Smith is since informed, and he believes said statements of said paper are both grossly false, and that said representations made by said Carnan to said Savitts, and repeated by the latter to said Smith, were also grossly false; but at the time of giving his said note said Smith had not the means of knowing such falsehood, and he never believed the statements of said paper "Z," and the representations of said Carnan; and it was wholly in consequence of them, and his believing them, that he gave said note and paid said $100, neither of which would he have done but for said false statements and representations. With the above qualification, and except the responses to 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said Smith adopts all of said Collum's answer as his own, and in all respects applies the language of it to his own part of this case, and alleges that it is true as to him and his part of this case.

JAMES SMITH.

R. CRAWFORD, *Solicitor.*

STATE OF INDIANA,
*Floyd County, ss:*

Said James Smith makes oath, and says his foregoing answer,
67 so far as it is stated in his knowledge, is true, and so far as stated on information or belief he believes to be true.

JAMES SMITH.

Subscribed and sworn to this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The joint answer of John Dixon and Emily C., his wife, to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Dixon and wife, and others. Said John Dixon, for himself, answers:

To 2d interrogatory. That he did not subscribe, nor authorize any person to subscribe, for stock in said insurance company, unless his giving his note and mortgage, as alleged in said bill, and his procuring George F. Savitts to accept a bill for $500, payable to said insur-

ance company, which included $50 on account of said Dixon, was in law such a subscription, which he is advised it was not.

To 3d interrogatory. That he was fraudently induced, and being so induced, he gave his note and mortgage, as alleged in plaintiffs' bill, and procured said Savitts to accept a bill, as aforesaid, covering $50 on account of said Dixon. He does not recollect when said bill was payable, but gave said note and mortgage and procured said $50, to be so included in said acceptance, wholly in consequence of said
68 fraud, and he denies that there was any valid consideration for his said note and mortgage, or for the $50 covered by said acceptance, or that he is bound to pay the former, or said Savitts, the latter.

To 4th interrogatory. That said note and mortgage were dated, due, and payable, as stated in plaintiffs' bill, and no part of them, or of the $50 covered by said acceptance, has been paid, and said Dixon did not pay $50, or any of it at the time said note was given.

To 5th interrogatory. That he admits such calls of payment on said stock were made, as alleged in plaintiffs' bill, and that he received by mail one notice of such call of ten per cent., and he believes he received but one, and he does not recollect the date of it.

To 6th interrogatory. That his said note, and the $50 covered in said bill, are wholly unpaid; and if valid the same and all interest thereon are now due.

To 14th interrogatory. That the payment of said note, and as he is informed and believes of said bill covering said $50 has never been demanded in any other way than by such notices as are mentioned in his answer to fifth interrogatory.

Said Dixon has heard the answer of his co-defendant Collum carefully read, and he says the false and fraudulent representations therein alleged to have been made by said Carnan to said Collum were
69 not made by said Carnan directly to said Dixon, but he is informed and believes that said Carnan, as agent of said insurance company, made substantially the same false representations to said Savitts; and he alleges that said Savitts afterwards, as the agent of said insurance company, and at the time and just before the said note was given, repeated said false representations to said Dixon, and said Savitts, as such agent, at the same time exhibited to said Dixon a paper purporting to have been certified by the secretary of said insurance company, under its seal, dated April 22, 1850, which falsely stated the liabilities of said insurance company, on the 31st day of March, 1850, to have been only $1,387 84, when, in fact, her liabilities were at that time many times greater than that same; said paper is filed in this suit as exhibit "Z;" said Dixon is since informed and believes said statement in said paper is grossly false; and that said representations made by said Carnan to said Savitts, and repeated by the latter to said Dixon, were grossly false and fraudulent, but at the time of giving said note and mortgage, and procuring said $50 to be included in said acceptance, he fully believed said statements and representations and had not then the means of knowing their falsity; and it was wholly in consequence of them and his believing them that he gave his said note and mortgage, and procured said $50 to be covered

by said acceptance, which he would not have done but for said false statement and representations. With the above qualification,
70 and except the responses to 2d, 3d, 4th, 5th, and 6th and 14th interrogatories, said Dixon adopts all of said Collum's answer as his own, and in all respects applies the language of it to his own part of this suit, and alleges that the whole of said answer (with the qualification and exceptions aforesaid) is true as to himself and his part of this case.

And said Emily C. answers and admits that she sealed and delivered the mortgage in plaintiffs' bill described; as to all the other matters in said interrogatories she knows nothing, and has derived what information she has about them from her husband, and she refers to his answer and adopts it as to all said other matters.

JOHN DIXON.

R. CRAWFORD, *Sol. p. d.*

STATE OF INDIANA,
*Clark County, ss:*

Said John Dixon and Emily C., his wife, severally make oath and say their foregoing answer, as far as it is stated on information or belief, they believe it to be true, and so far as stated on their knowledge, respectively, it is true.

JOHN DIXON.
EMELINE C. DIXON.

Subscribed and sworn to by the above-named respondents this 16th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of Benjamin F. Marsh to the bill of complaint of Adam Ogilvie and others, in the United States circuit court, against
71 the Knox Insurance Company, said Marsh, and others. Said Marsh answers as follows:

To 2d interrogatory. That he did not subscribe, nor authorize any person to subscribe, for stock in said insurance company, unless his giving his note and bills stated in the bill of complaint were in law such a subscribing, which he is advised they are not.

To 3d interrogatory. That he was fraudulently induced and did give his note and bills stated in the bill of complaint, but he did so wholly in consequence of the fraud hereinafter set forth; and he denies that there was any valid consideration for said notes and bills, or that he is legally bound to pay said note and last bill.

To 4th interrogatory. That his said note and bills were dated, due, and payable, as stated in bill of complaint, and no part of said note or last bill has been paid.

To 5th interrogatory. That he admits such calls for payments on the stock of said insurance company were made as are stated in the bill of complaint, and that he received by mail a notice of one such call for 10 per cent., and he received no more than one, and does not remember date.

To 6th interrogatory. That his said note and last bill are wholly unpaid; and if valid they and all interest on them are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana, and a resident of Jeffersonville.

To 14th interrogatory. That payment of his said note and last bill has been requested of him in no other way than by the notice stated in his answer to 5th interrogatory. He has heard the answer
72 of his co-defendant Collum carefully read, and, excepting the answers therein to the 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, he adopts the whole of it as his, said Marsh's, own answer, and alleges that the language of it is true as applied to him and his part of this case.

BENJAMIN F. MARSH.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Clark County, ss:*

Said Benjamin F. Marsh makes oath and says that his foregoing answer, so far as stated on his information, is true, and so far as stated on information or belief he believes to be true.

BENJAMIN F. MARSH.

Subscribed and sworn to this 16th of October, 1852, before me, a judge of the supreme court of Indiana.

THOMAS L. SMITH.

The answer of Hiram Maberry to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana against the Knox Insurance Company, said Maberry, and others. Said Maberry answers and says:

To 2d interrogatory. That he did not subscribe, nor authorize any person to subscribe, for stock in said insurance company, unless his giving the notes and bills described in the bill of complaint were in law such a subscription, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, as hereinafter mentioned, and being so induced he gave his note and bills described in the bill of complaint, but he denies that there
73 was any consideration for any of them or that he is bound to pay them.

To 4th interrogatory. That his said note and bills were dated, due, and payable, as alleged in bill of complaint, and no payment has been made in said note or last bills.

To 5th interrogatory. That he admits such calls for payment on said stock as are stated in bill of complaint, and he received by mail one, and perhaps two, or even three notices of such calls, which he believes was for 10 per cent., but does not recollect their date, nor believe he received any more than the notice above stated.

To 6th interrogatory. That his said note and last bill are wholly unpaid; and if valid they and all interest on them are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana, and a resident of Jeffersonville.

To 14th interrogatory. That payment of his said note and last bill has not been requested of him in any other way than by the notice stated in his answer to 15th interrogatory.

He has heard the answer of his co-defendants, Collum, and Woods, Maberry, carefully read, and says the false representations therein stated were not made by said Carnan directly to said Hiram, but he is informed and believes that said Carnan, when acting as the agent of said insurance company, in endeavoring to procure notes
74 and bills for such stock at Jeffersonville, made the same representations to said Collum, Woods, James Kergwin, John S. Battorff, and others; and that said Woods, ———, and others, just before he made his said note and first bill, repeated substantially the same false representations to him; that he did not then know their falsity, but believed them to be true, and wholly in consequence thereof he gave said note and bills, which otherwise he would not have done. Since he gave his said last bill he has discovered that all of said representations were grossly false. With the above qualification, and except the responses of said Collum and Woods to 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said Hiram adopts the answers of said Collum and Woods, and applies the language thereof to his part of this case, and alleges it is true as applied to him and his part of this case.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Clark County, ss:*

Said Hiram Maberry makes oath and says his foregoing answer, so far as stated in his knowledge, is true, and so far as stated in information or belief he believes it to be true.

HIRAM MABERRY.

Subscribed and sworn to this 16th of October, 1852, before me, a judge of the supreme court of Indiana.

THOMAS L. SMITH.

75 The answer of Woods Maberry to the bill of complaint of Adam Ogilvie and others exhibited in the United States circuit court for the district of Indiana against the Knox Insurance Company, said Maberry, and others. Said Woods Maberry answers as follows:

To 2d interrogatory. That he did not subscribe nor authorize any person to subscribe for stock in said insurance company, unless his giving the note and bills mentioned in the plaintiffs' bill was in law such a subscription, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, as hereinafter mentioned, and being so induced he gave the note and bills

named in the plaintiffs' bill; but he denies that there was any valid consideration for them, or that he is legally bound to pay any of them.

To 4th interrogatory. That said note and bills were dated, due, and payable, as stated in plaintiffs' bill, and no payment has been made on said note or said last bill.

To 5th interrogatory. That he admits such calls of payment on said stock as alleged in said bill, and that he received by mail two or three notices of such calls; is not certain he received more than two; but did not more than three, and does not recollect their dates; he thinks they were all for 10 per cent. calls.

To 6th interrogatory. That his said note and last bill are wholly unpaid; and if valid they and all interest on them are now due.

76 To 9th interrogatory. That he is a citizen of the State of Indiana and a resident of Jeffersonville.

To 14th interrogatory. That payment of this said note and last bill have not been requested in any other way than by said notices mentioned in his answer to 5th interrogatory.

He has heard the answer of his co-defendant Collum carefully read, and says that said Carnan, when acting as the agent of said insurance company, in endeavoring to obtain notes and bills for stock in said insurance company, and just before said Maberry gave his said note and first bill, made substantially the same representations to him as those set forth in said Collum's answer, except said Maberry does not recollect that said Carnan stated to him the amount of funds which said insurance company there had on hand otherwise than as a large amount, and said Carnan at the same time told said Maberry that said insurance company had been doing a very prosperous business; said Carnan also made (as said Maberry is informed and believes) substantially the same representations to James Kergwin, John S. Battorff, who also repeated them to said Maberry just before he gave his said note and first bill; when he gave his said notes and bills he did not know the falsity of any of said representations, but he fully believed them; and it was wholly in consequence of them and his believing them that he gave his said note and bills, none of which would he have given but for said representations and his belief of them; since he

77 gave said last bill he has ascertained that all of said representations are grossly false.

With the above qualification, and except the answers therein to 2d, 3d, 4th, 5th, 6th, 9th and 14th interrogations, said Maberry adopts all of said Collum's answer as his own, and applies all the language of it to his own part of this case, and says it is true as applied to him and his part of this case.

R. CRAWFORD,
*Sol., p. d.*

Said Woods Maberry makes oath and says his foregoing answer, so far as stated on his knowledge is true, and so far as stated on his information or belief he believes it to be true.

W. MABERRY.

Subscribed and sworn to, October 16, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The joint answer of Myrom Stratton and Mary A., his wife, to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Stratton, and others. Said Myrom, for himself, answers as follows:

To 2d interrogatory. That he did not subscribe nor authorize any person to subscribe for stock in said insurance company unless his paying the $50 and giving the note and mortgage alleged in plaintiffs' bill are, in law, such a subscription, which he is advised they are not.

78 To 3d interrogatory. That by being fraudulently induced he paid said $50 and gave his note and mortgage, alleged in plaintiffs' bill, but he denies that there was any valid consideration for said note or that he is legally bound to pay it.

To 4th interrogatory. That said note was dated, due, and payable, as alleged in plaintiffs' bill; and if valid it and all interest on it are now due.

To 5th interrogatory. That he admits such calls for payment on stock as are alleged in plaintiffs' bill, and that he received one notice only of one such call of 10 per cent.; he does not recollect its date.

To 6th interrogatory. That his said note is wholly unpaid, and if valid it and all interest on it are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana and a resident of Clark county.

To 14th interrogatory. That payment of his said note has been requested of him in no other way than by the notice mentioned in his answer to 5th interrogatory.

He has heard the answer of his co-defendant Collum carefully read, and he says the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan directly to said Myrom; but he is informed and believes that said Carnan, when acting as the agent of said insurance company, in procuring such notes for stock, made substantially the same representations to

79 said George F. Savitts, and to other persons at said Jeffersonville, and he believes that said Savitts, when acting as the agent of said insurance company, in procuring said note of said Myrom, repeated the same representations to him, and other persons, whose names he does not recollect, repeated the same to him; said Savitts also, when acting as such agent aforesaid, exhibited to said Myrom a paper purporting to have been certified by the secretary of said insurance company under its seal on the 22d of April, 1850, which represented that the liabilities of said insurance company on the 31st of March, 1850, were only $1,387 84, and the profits of said insurance company at the same time were over $25,000; said paper is filed in this suit as exhibit "Z;" said Myrom at the time said paper was shown to him, and said false representations of said Carnan were repeated to him, had no means of knowing their falsity and he fully believed them, and it was wholly in consequence of them and his believing them that he gave his said note and mortgage, which he would not have done had it not been for them and his belief of them; said Myrom is since informed, believes and charges, that the statements of said paper and said representations

of said Carnan were grossly false and fraudulent. With the above qualifications, and excepting said Collum's responses to 2d, 3d,
80 4th, 5th, 6th, 9th, and 14th interrogatories, said Myrom adopts the whole of said Collum's answer as his own, and applies the language of it to his part of this case, and alleges that the same is true as to himself and his part of this case.

And said Mary, for herself, answers, that she sealed and delivered the mortgage as in plaintiffs' bill alleged, and as to all the other matters in said interrogatories she refers to the foregoing answer of her husband, which, to the best of her knowledge and information, is true, and she therefore adopts it as her own.

MYROM STRATTON.
MARY A. STRATTON.

R. CRAWFORD, *Solicitor, p. d.*

STATE OF INDIANA,
*County, ss:*

Said Myrom Stratton and Mary, his wife, make oath, and say their foregoing answer, so far as stated on their knowledge, is true, and so far as stated on information or belief they believe it to be true.

MYROM STRATTON.

Subscribed and sworn to by the above-named Myrom Stratton and Mary A. Stratton this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of William G. Armstrong to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Armstrong, and others. Said Armstrong answers as follows:
81 To 2d interrogatory: That he did not subscribe, nor did he authorize any person to subscribe, for stock in said insurance company, unless his giving his note and bills, described in the bill of complaint, was in law such a subscribing, which, he is advised, it was not.

To 3d interrogatory. That he was fraudulently induced, as hereinafter stated; and being so induced he gave the notes and bills described in the bill of complaint; but he denies that there was any valid consideration therefor, or that he is legally bound to pay his said note and last bill.

To 4th interrogatory. That his said note and bills were dated, due, and payable, as alleged in complainants' bill, and no part of said note or last bill has been paid.

To 5th interrogatory. That he admits such calls for payment on stock were made as are stated in the bill of complaint; and he may have received by mail one notice of such a call, but not more; and he does not recollect its date.

To 6th interrogatory. That his said note and last bill are wholly unpaid; and if valid they and the interest on them are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana and a resident of Jeffersonville.

To 14th interrogatory: That payment of his said note and last bill has not been demanded in any way, unless by such notice as is stated in his answer to 5th interrogatory.

82 He has heard the answer of his co-defendant Collum carefully read, and says, that the false representations therein set forth were not made to him directly by said Carnan; but he is informed, and believes, that said Carnan, while acting as the agent of said insurance company, in endeavoring to procure such notes and bills for stock at Jeffersonville, made substantially the same representations to George F. Savitts, who afterwards, when acting also as the agent of the said insurance company in procuring said Armstrong to give his said note and bills, and immediately before the same were given, repeated the same representations to said Armstrong; said Savitts, at the same time, exhibited to said Armstrong a paper, which is filed in this suit as exhibit "Z," and which purports to have been certified by the secretary of said insurance company, under its seal, on the 22d of April, 1850, and which stated the liabilities of said insurance company, on the 31st of March, 1850, to have been only $1,387 84, and the profits of said insurance company, after satisfying all her liabilities, to have been, on the same day, over $25,000. Said Armstrong did not then know the falsity of said representations, repeated to him by said Savitts, of the statements of said paper "Z," but fully believed them; and wholly in consequence of them, his belief gave his said note and said bills, which he would not have done but for said representations and statements, which, since he accepted said last bill, he has discovered were grossly false and fraudu-

83 lent. With the above qualifications, and except the responses of said Collum to 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said Armstrong adopts the whole of said Collum's answer as his own, and applies the language of it to his part of this case, and alleges that it is true as applied to him and his part of this case.

WM. G. ARMSTRONG.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Clark County, ss:*

Said William G. Armstrong makes oath, and says his foregoing answer, so far as stated on his knowledge, is true, and so far as stated on information or belief he believes it to be true.

WM. G. ARMSTRONG.

Subscribed and sworn to this 16th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of Benjamin Taylor to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Taylor, and others. Said Taylor answers as follows:

To 2d interrogatory. That he did not subscribe, nor authorize any person to subscribe, for any stock in said insurance company, unless

his giving his note and paying $100, as is hereinafter stated, was in law such a subscription, which he is advised it was not.

To 3d interrogatory. That he was induced fraudulently; and being so induced, he gave his said note and paid said $100, as alleged
84 in plaintiffs' bill; but he denies that there was any valid consideration therefor, or that he is legally bound to pay any of said note.

To 4th interrogatory. That said note was dated, due, and payable, as alleged in plaintiffs' bill, and no payment has been made on it.

To 5th interrogatory. That he admits that such calls of payment on stock were made as are alleged, and that he had one notice of two such calls, and no more; said notice was dated February 13th, 1851.

To 6th interrogatory. That his note is wholly unpaid; and if valid, it, and all interest on it, is now due.

To 14th interrogatory. That payment of his said note has not been requested in any other manner than by the notices mentioned in his answer to 5th interrogatory.

He has heard the answer of his co-defendant Collum carefully read, and he says the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan directly to said Taylor, but were, as he is informed and believes, made by said Carnan, as such agent of said insurance company, to George F. Savitts; and afterwards the same were repeated to said Taylor at and just before his said note was made by said Savitts, acting as the agent of said insurance company; and said Savitts, as such agent, at the same time exhibited to said Taylor a paper, purporting to be certified by the secretary of said insurance company, under its seal, on the 22d of April, 1850, which falsely stated the liabil-
85 ities of said insurance company, on the 31st of March, 1850, to have been only $1,387 84, when in fact her liabilities at that time (as said Taylor is now informed and believes) were many times greater than that amount; but he is not informed what the actual amount was. Said paper is filed in this suit as exhibit "Z." Said Taylor is now informed, and believes, the statement of said paper is grossly false; and that said representations made by said Carnan to said Savitts, and repeated by the latter to said Taylor, were also grossly false and fraudulent; but at the time of giving his said note, said Taylor had not the means of knowing such falsehood; and he fully believed the statements of said paper and said representations; and it was wholly in consequence of them, and his believing them, that he gave his said note and paid said $100; neither of which would he have done but for said false statements and representations.

With the above qualifications, and except the responses to 2d, 3d, 4th, 5th, 6th, and 14th interrogatories, said Taylor adopts all of said Collum's answer as his own, and in all respects applies the language of it to his own part of this case, and alleges it is true as to himself and his part of this case.

BENJAMIN TAYLOR.

R. CRAWFORD, *Solicitor.*

STATE OF INDIANA,
*Clark County, ss:*

Said Benjamin Taylor makes oath and says his foregoing answer, so far as stated on his knowledge, is true, and so far as stated on information or belief he believes it to be true.

BENJAMIN TAYLOR.

86 Subscribed and sworn to this October 15th, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of Elizabeth Wathen, as administratrix of Athanasius Wathen, deceased, to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Elizabeth, and others. Said Elizabeth answers as follows:

To 2d interrogatory. That she is informed and believes said decedent did not subscribe, nor authorize any person to subscribe, for stock in said insurance company, unless his giving the note and bills mentioned in the bill of complaint were in law such a subscribing, which she is advised they were not.

To 3d interrogatory. That she is informed and believes said decedent was fraudulently induced; and being so induced, he gave said note and bills, but he gave them wholly in consequence of said fraud; and she alleges there was no valid consideration for them, and that she is not legally bound to pay any of them.

To 4th interrogatory. That said note and bills were dated, due, and payable as stated in bill of complaint, and no part of said note and last bill has been paid, as she is informed and believes.

To 5th interrogatory. That she has no knowledge, information, or grounds of belief, except the statements of the bill of complaint, whether any such calls were made for payment of stock as al-
87 leged in bill of complaint, or whether any notice thereof was given to said decedent.

To 6th interrogatory. That she is informed and believes said note and last bill are wholly unpaid; and if valid, they, and all interest on them, are now due.

To 9th interrogatory. That she is a citizen of the State of Indiana and a resident of Jeffersonville.

To 14th interrogatory. That she has no knowledge, information, or means of belief, except the statements of the bill of complaint, whether payment of said note or last bill was ever in any way requested of said decedent; it has not been of her.

She admits the death of said Athanasius, which was on the 25th of January, 1851, and she is administratrix of his estate. She has heard the answer of her co-defendant Collum carefully read; and she is informed and believes that the same false representations therein alleged to have been made by said Carnan to, and on the hearing of said Collum, were also at the same time heard by said decedent; that they were made by said Carnan when acting as the agent of said insurance company in endeavoring to procure decedent's said note and first bill;

that the decedent did not know their falsity, but believed them fully and wholly, in consequence thereof gave said notes and bills; and that said representations are grossly false and fraudulent. With the above qualification, and excepting the responses to 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, she adopts the answer of said
88 Collum, and applies its language to her own part of this case, and alleges that she is informed and believes it is true, as applied to her part of this case.

ELIZABETH WATHEN.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Floyd County, ss:*

Said Elizabeth Wathen makes oath and says her foregoing answer, so far as stated on her knowledge, is true, and so far as stated on information or belief she believes it to be true.

ELIZABETH WATHEN.

Subscribed and sworn to this 16th October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The joint answer of Cynthia Maberry and Sarah Maberry to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Cynthia, Sarah, and others. Said Cynthia and Sarah answer as follows:

To 2d interrogatory. That they did not subscribe, and, so far as they know, no person subscribed for them, for any stock in said insurance company, unless their giving their several notes mentioned in the bill of complaint was in law such a subscribing, which they are advised it was not.

To 3d interrogatory. That they were fraudulently induced, and being so induced (as hereinafter stated) they severally gave their
89 notes, stated in the bill of complaint, for $450 in each, and their brothers Woods and Hiram gave their notes for $100 in behalf of said Cynthia and Sarah, but they deny that there was any valid consideration for any of said notes, or that the makers of them are legally bound to pay them.

To 4th interrogatory. That their said notes and that of said Woods and Hiram were dated, due, and payable as stated in bill of complaint, and they believe no part of either of them has been paid.

To 5th interrogatory. That they admit such calls for payment on said stock as are alleged in bill of complaint, but they did not receive any notice thereof.

To 6th interrogatory. That said notes given by them, and that by said Woods and Hiram for them, are wholly unpaid.

To 9th interrogatory. That they are citizens of the State of Indiana and residents of Jeffersonville.

To 14th interrogatory. That payment of their said notes has been in no way requested of them by said insurance company.

They have heard the answers of their co-defendants Collum and Woods Maberry carefully read, and they say that the fuller representations therein set forth were not read to either of them directly by said Carnan; but they are informed and believe they were made by him to said Collum and Woods, as stated in said answer; and they allege that said Woods repeated substantially the same representations to said Cynthia and Sarah just before their said note was given;
and they also heard the same from other persons also before
90 said note was given. They did not then know the falsity of said representations, but believed them to be true, and gave their said note wholly in consequence of so believing them. They have since been informed and believe said representations are grossly false. With the qualification aforesaid, and except the answers of said Collum and Woods to 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogations, said Cynthia and Sarah adopt the answers of said Collum and Woods as their own, and allege, to the best of their knowledge, information, and belief, the language thereof is true, as applied to them and their part of this case.

CYNTHIA MABERRY.
SARAH MABERRY.

R. CRAWFORD, *Sol'r, p. d.*

STATE OF INDIANA,
*Clark County, ss:*

Said Cynthia and Sarah Maberry severally make oath and say that their foregoing answers, so far as stated on their information or belief, they believe it to be true.

CYNTHIA MABERRY.
SARAH MABERRY.

Subscribed and sworn to by the above-named respondents this October 16th, 1852, before me, a judge of the supreme court of Indiana.
THOS. L. SMITH.

The answer of Henry French to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said French, and others. Said French, answering, says as follows:
To 2d interrogatory. That he did not subscribe, nor authorize
91 any person to subscribe, for stock in said insurance company, unless his giving his note and said bills of exchange, as alleged in plaintiffs' bill, were in law such a subscription, which he is advised they were not.

To 3d interrogatory. That by being fraudulently induced, as is hereinafter stated, he gave his note, and became a party to said bills of exchange, as alleged in plaintiffs' bill, but he did it wholly in consequence of said fraud; and he denies that there was any valid consideration for said note or bills, or that he is legally bound to pay any part of them.

To 4th interrogatory. That said note and bills were dated, due, and

payable as alleged in plaintiffs' bill, and no payment has been made in said note and said last bill.

To 5th interrogatory. That he admits such calls as are alleged in plaintiffs' bill were made for payments on said stock, and that he received two notices by mail of two such calls of ten per cent. each; he received no more than said two notices, and does not remember their dates.

To 6th interrogatory. That his said note and last bill are wholly unpaid; and if valid, that they, and all interest on them, are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana, and a resident of Clark county.

To 14th interrogatory. That payment of his said note and last bill has been demanded in no other way than by said two notices mentioned in his answer to 5th interrogatory.

92 He has heard the answer of his co-defendant Collum carefully read, and he says the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan directly to said French; but he is informed, and believes, that substantially the same representations were made by said Carnan, when acting as the agent of said insurance company in procuring such notes for stock, to George F. Savitts; and he alleges that said Savitts afterwards, when acting as the agent of said insurance company in obtaining said note and bills from said French, repeated to him the same false representation. Said French then had no means of knowing their falsity, but fully believed them, and in consequence of that belief he gave said note and bills, which he would not have given but for said false representations, and his belief of them. With this qualification, and excepting said Collum's responses to the 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said French adopts the answer of said Collum as his own, and applies all the language of it to his part of this case, and alleges that the same is true as to himself and his part of this case.

HENRY FRENCH.

R. CRAWFORD, *Sol'r, p. d.*

STATE OF INDIANA,
*Floyd County, ss:*

Said Henry French makes oath, and says, that his foregoing answer, so far as stated on his knowledge, is true; and so far as stated on information or belief he believes it to be true.

HENRY FRENCH.

Subscribed and sworn to this October 15, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of Jacob Schwartz to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, said Schwartz, and others. Said Schwartz answers as follows:

To 2d interrogatory. That he did not subscribe, nor authorize any

person to subscribe, for any stock in said insurance company, unless his paying the money and giving his note, as hereinafter mentioned, was in law a subscription for such stock, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, and being so induced he gave his note and paid said $100, as alleged in plaintiffs' bill; but he denies that there was any valid consideration therefor, or that he is legally bound to pay said note.

To 4th interrogatory. That said note was dated, due, and payable as alleged in plaintiff's bill, and no payment has been made upon it.

To 5th interrogatory. That he admits such calls for payment on said stock, as alleged in plaintiff's bill, and that he received by mail two notices of such calls, and no more; but he does not recollect the date of them.

To 6th interrogatory. That his said note is wholly unpaid, and if valid, it and all interest on it is now due.

94 To 9th interrogatory. That he is a citizen of Indiana and a resident of Clark county.

To 14th interrogatory. That payment of his said note has been requested in no other way than by the notices mentioned in his answer to 5th interrogatory, which were for 10 per cent. each.

He has heard the answer of his co-defendant Collum carefully read, and says the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan to said Schwartz directly, but, as he is informed and believes, were made by said Carnan, when acting as such agent, to George F. Savitts, and afterwards the same were repeated by said Savitts to said Schwartz, when said Savitts was acting as the agent of said insurance company in obtaining said note and said $100, and just before the same were given and paid; and said Savitts also, at the same time, while acting as such agent as aforesaid, either exhibited to said Schwartz a paper, or informed him of its contents, he is not certain which, purporting to have been certified by the secretary of said insurance company, under its seal, on the 22d of April, 1850, and which falsely stated that the liabilities of said insurance company on the 31st of March, 1850, were only $1,387 84, and the profits of said insurance company were over $25,000, when, in fact, her liabilities at that time, as said Schwartz is informed and believes were many times greater

95 than $1,387 84; but he is not informed what the actual amount was, and her profits were very much less than $25,000; and, if anything at all, were very little. Said paper is filed in this suit as exhibit "Z." Said Schwartz is since informed and believes said statements of said paper are both grossly false, and that said representations made by said Carnan to said Savitts, and repeated by him to said Schwartz, were also grossly false; but at the time of giving his said note he had not the means of knowing such falsehood, and he fully believed the statements of said paper "Z" and the representations of said Carnan; and it was wholly in consequence of them, and his believing them, that he gave his said note and paid said $100; neither of which would he have done but for said false statements and representations. With the above qualifications, and excepting the

responses to the 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said Schwartz adopts all of said Collum's answer as his own, and in all respects applies the language of it to his own part of this case, and alleges that it is true as to him and his part of this case.

JACOB SCHWARTZ.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Floyd County, ss:*

Said Jacob Schwartz makes oath, and says his foregoing answer, so far as it is stated on his knowledge, is true, and so far as stated on information or belief he believes it to be true.

JACOB SCHWARTZ.

96 Subscribed and sworn to this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of William Logan to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company, and said Logan (by the name of Carter J. Logan) and others. Said Logan answers as follows:

To 2d interrogatory. That he did not subscribe, nor authorize any person to subscribe, for stock in said insurance company, unless giving the notes and bills, as hereinafter mentioned, was in law a subscription for such stock, which he is advised it was not.

To 3d interrogatory. That on the 4th of May, 1850, he and Henderson Carter were partners doing business by the name of Carter & Logan. Said Carter died in July, 1850. He and his partner were fraudulently induced, and being so induced, they gave their note for $900; they did not pay $100, as alleged in plaintiffs' bill, but gave a bill of exchange for that sum of same date with said note, which bill was taken up by said Logan October 7, 1850, and a new one given in its stead, drawn by John Mitchell, accepted by said Logan, and payable to said insurance company. Said note and bills were given by said Carter to said Logan wholly in consequence of said fraud, and said Logan denies that there was any valid consideration for said note or bills, or that he is legally bound to pay any part of them.

97 To 4th interrogatory. That said note was dated, due, and payable, as alleged in plaintiffs' bill. He does not recollect when said second bill was payable. No payment has been made on either.

To 5th interrogatory. That he admits that such calls of payment on said stock were made as stated in the plaintiffs' bill, and he received by mail one notice of such a call of ten per cent., and he received but one, and does not recollect the date of it.

To 6th interrogatory. That his said note and said second bill are wholly unpaid, and if valid they and all interest on them are due.

To 14th interrogatory. That the payment of said note or last bill has not been requested of him in any other way than by said notice mentioned in answer to 5th interrogatory.

Said Logan has heard the answer of his co-defendant Collum care

fully read, and he says the false and fraudulent representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan to said Logan directly, but he is informed and believes said Carnan, as such agent, made substantially the same false and fraudulent representations to said Savitts, and he alleges that Savitts afterwards, when acting as the agent of said insurance company, repeated the same representations to said Logan and Carter at the time and just before they gave said note and said first bill. Said Savitts at the same time, and as such agent, exhibited to said Logan and Carter a paper, purporting to be certified by the secretary
98 of said insurance company, under its seal, which falsely stated the liabilities of said insurance company to have been, March 31st, 1850, only $1,387 84, when in fact her liabilities were many times greater than that amount at that time, and said Logan is informed and believes not less than $ ; and he is now also informed and believes said secretary knew said statement was not correct when it was made; said paper is made a part of this answer, and filed in this suit as exhibit "Z." Said Logan and Carter fully believed said representations and the statements of said paper "Z," and had not the means then of knowing their falsehood, and they were induced by them to give said note and bills, which they would not have done had it not been for said false representations and the false statements of said paper "Z," with the above qualification; and excepting said Collum's responses to the 2d, 3d, 4th, 5th, 6th, and 14th interrogatories, said Logan adopts all of said Collum's answer as his own, and in all respects applies the language of it to his own part of this case, and alleges that the whole of said answer (with the qualification and exceptions aforesaid) is true as to himself and his part of this case.

WILLIAM LOGAN.
R. CRAWFORD, *Sol'r.*

STATE OF INDIANA,
*Clark County, ss:*

William Logan makes oath and says his foregoing answer, so far as stated of his own knowledge, is true, and so far as stated on information and belief he believes it to be true.
99 WILLIAM LOGAN.

Subscribed and sworn to this 15th of Oct., 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of Thomas L. Dean to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana, against the Knox Insurance Company said Dean and others. Said Dean for himself answers as follows:

To 2d interrogatory. That he did not subscribe, nor authorize any person to subscribe, for any stock in said insurance company, unless the giving the notes and mortgage mentioned in the plaintiffs' bill was in law such a subscription, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, and being so induced he gave his notes and mortgage, as mentioned in plaintiffs' bill, but he gave said notes and mortgage wholly in consequence of said fraud; and he denies that there was any valid consideration for said notes and mortgage, or that he is legally bound to pay any part of them.

To 4th interrogatory. That said notes and mortgage were dated, due, and payable as stated in plaintiffs' bill, and no part of them has been paid.

To 5th interrogatory. That he admits such calls of payment on said stock were made as alleged in plaintiffs' bill, and that he received by mail two notices of such calls of ten per cent. each, and he received no more, and does not recollect the date of those.

100 To 6th interrogatory. That his said notes are wholly unpaid, and if valid they and all interest on them are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana and a resident of Clark county.

To 14th interrogatory. That payment of said notes and mortgage has not been demanded in any other way than by said two notices mentioned in his answer to fifth interrogatory.

He has heard the answer of his co-defendant Collum carefully read, and says the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan directly to said Dean, but he is informed and believes the same were made by said Carnan, acting as the agent of said insurance company, in endeavoring to procure notes for stock in said insurance company to said Savitts, and were repeated by the latter, when acting as the agent of said insurance company, in persuading said Dean to give his said notes at the time and just before they were given; and said Savitts also, at the same time when so acting as such agent, exhibited to said Dean a paper purporting to have been certified by the secretary of said insurance company, under its seal, on the 22d day of April, 1850, and which falsely stated that the liabilities of said insurance company on the 31st of March, 1850, were only $1,387 84, and the profits of said insurance company were over $25,000, when in fact her liabilities at that time were (as said Dean is informed and believes) many

101 times greater than $1,387 84, and the profits were very much less than $25,000, but he is not informed what the actual amount of either was. Said paper is filed in this suit as exhibit "Z." Said Dean is since informed and believes said statements of said paper are both grossly false, and that said representations made by said Carnan to said Savitts, and repeated by him to said Dean, were grossly false also, but at the time of giving his said notes and mortgage he had not the means of knowing such falsehood, and believed said statements of paper "Z" and said representations of said Carnan, and it was wholly in consequence of his believing them that he gave his said notes and mortgage, neither of which would he have given but for said false statements and representations.

With the above qualifications, and excepting the responses to the 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said Dean adopts all of said Collum's answer as his own, and in all respects applies the

language of it to his own part of this case, and alleges that it is true as to him and his part of this case. Said Mary E., wife of said Thomas L., died about September 3, 1850.

THOMAS L. DEAN.

R. CRAWFORD, *Sol'r, p. d.*

STATE OF INDIANA,
*Floyd County, ss:*

Said Thomas L. Dean makes oath and says his foregoing answer, so far as stated on his knowledge, is true, and so far as stated in information or belief he believes it to be true.

THOMAS L. DEAN.

102 Subscribed and sworn to this 19th of October, 1852, before me, a judge of the supreme court of Indiana.

THOMAS L. SMITH.

The answer of Andrew S. White, Samuel P. Wisaker, William Hughes, and Michael Wolfe to the bill of complaint of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana against the Knox Insurance Company, said White, Wisaker, Hughes, Wolf, and others, these defendants, answer as follows:

To 2d interrogatory. That they did not subscribe, nor authorize any person to subscribe, for stock in said insurance company, unless their paying $400 and giving their note, as alleged in plaintiffs' bill, was in law such a subscription, which they are advised it was not; they admit their partnership as alleged.

To 3d interrogatory. That they were fraudulently induced, and being so induced they paid said $400, and gave their said note, as alleged, but they did it wholly in consequence of said fraud, and they deny that there is any valid consideration for said note, or that they are legally bound to pay it.

To 4th interrogatory. That said note was dated, due, and payable as alleged in said bill, and none of it has been paid.

To 5th interrogatory. That they admit such calls of payment on stock were made as alleged in said bill, and they received by mail one and perhaps two notices of such calls, and no more, and they do not recollect the date of them.

To 6th interrogatory. That said note is wholly unpaid, and if valid, it and all interest on it are now due.

103 To 9th interrogatory. That said Hughes and Wolfe are citizens of the State of Indiana and residents of Jeffersonville, and said White and Wisaker are citizens and residents of the State of Kentucky.

To 14th interrogatory. That payment of their said note has not been requested in any other way than by the notices mentioned in their answer to 5th interrogatory.

At and just before said $400 was paid and said note given, Robert N. Carnan, then acting as the agent of said company in procuring

said note and others to be given for such stock, said in the hearing of said Hughes and divers other persons that stock in said insurance company had then been subscribed for to the amount of sixty to seventy-five thousand dollars at Vincennes, and on the Wabash river, and paid and secured as the charter required, and that they already had a large amount of funds on hand, and their principal object in getting subscribers of stock at Jeffersonville was to have a branch of said insurance company at that place, so as to sell their exchange there. Said Hughes and Wolf, who paid said $400, and gave said note for said firm, did not then know the falsity of said representations of said Carnan, but fully believed them, and it was wholly in consequence of said representations and their belief of them that they paid said $400 and gave said note, which they would not have done but for said belief. They (said White, Wiseaker, Hughes, and Wolfe) were afterwards informed, and they believe and charge, that
104 all of said representations were fully, grossly false, and especially that there had not been at the time they were made from sixty to seventy-five thousand dollars of stock in said insurance company subscribed for at Vincennes, and on the Wabash river, and paid and secured as said charter required, and they believe much less than that sum.

With the above qualification as to what was represented by said Carnan, and excepting the responses to the 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, said White, Wiseaker, Hughes, and Wolfe adopt the answer of their co-defendant Collum, (which they have heard carefully read,) and they apply its language to their own part of this case, and allege that it is true as to them and their part of this case.

A. S. WHITE & CO.

R. CRAWFORD, *Sol'r, p. d.*

STATE OF INDIANA,
——— *County, ss:*

Said Andrew S. White, Samuel P. Wiseaker, William Hughes, and Michael Wolfe, severally make oath and say that their above answer, so far as stated on their knowledge, respectively, is true, and so far as stated on their information and belief they believe it to be true.

WILLIAM HUGHES.

Subscribed and sworn to by William Hughes this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOMAS L. SMITH.

The answer of George W. Schwartz to the bill of complaint
105 of Adam Ogilvie and others, exhibited in the United States circuit court for the district of Indiana against the Knox Insurance Company, said Schwartz, and others, said Schwartz, saving, &c., answers as follows:

To the 3d interrogatory. That he was fraudulently induced, and being so induced he did give his note with the security for the amount, and of about the date alleged in the plaintiffs' bill, and said Simon

Battorff accepted a bill for $700, payable to said insurance company, in which, at said Schwartz's request, was included $100 on his account, but he gave said note and had said $100 included in said bill wholly in consequence of said fraud, and he denies that there was any valid consideration for said note and for said accepted bill, as to said $100, or that he is legally bound to pay said note on said Battorff's said part of said bill.

To the 4th interrogatory. That his said note was dated and payable as alleged in plaintiffs' bill, and no payment has been made upon it.

To the 5th interrogatory. That he admits such calls of payment on said stock in the manner and at the times stated in plaintiffs' bill, and he received by mail two notices of such calls of 10 per cent. each, and he believes he received but two, but does not recollect at what time.

To the 6th interrogatory. That his said note is wholly unpaid and if valid, it and all interest on it are now due.

To the 14th interrogatory. That payment of his said note has never
106 been requested of him in any other way than by said two notices mentioned in his answer to the 5th interrogatory.

Said Schwartz has heard the answer of his co-defendant Collum carefully read, and excepting his responses to the 4th, 5th, 6th, and 14th interrogatories, said Schwartz adopts all of said answer as his own, both the part which is responsive to the plaintiffs' bill and that which is defensive only, and in all respects he applies the language of it to the facts of his own part of this case, and alleges that the whole of said answer (excepting as aforesaid) is true as to himself, and by part of this case, and especially he alleges that the fraud therein set forth was practiced upon him, and he was deceived by it, and but for said fraud he would not have made said note nor requested said Simon Battorff to so accept said bill.

R. CRAWFORD, *Solicitor.*

STATE OF INDIANA,
*Clark County, ss:*

Said George W. Schwartz makes oath and says his above answer, so far as stated of his own knowledge, is true, and so far as stated on information and belief he believes it to be true.

GEORGE W. SCHWARTZ.

Subscribed and sworn to this 16th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of George Schwartz to the bill of complaint of Adam Ogilvie and others, exhibited in the United States court for the dis-
107 trict of Indiana against the Knox Insurance Company, said Schwartz and others, said Schwartz answers as follows:

To 2d interrogatory. That he did not subscribe nor authorize any person to subscribe for any stock in said insurance company, unless his paying the money and giving his note, as is alleged in plaintiffs'

bill, was in law a subscribing for such stock, which he is advised it was not.

To 3d interrogatory. That he was fraudulently induced, and being so induced he gave his note and paid said $100, alleged in plaintiffs' bill, but he did so wholly in consequence of said fraud, and he denies that there was any valid consideration for said note or that he is legally bound to pay any of it.

To 4th interrogatory. That said note was dated, due, and payable, as alleged in plaintiffs' bill, and if valid, it and all interest on it are now due.

To 5th interrogatory. That he admits such calls for payment on said stock were made, as alleged in plaintiffs' bill, and that he received by mail two notices only for 10 per cent. call each, but does not recollect the date of them.

To 6th interrogatory. That his said note is wholly unpaid; and if valid, it and all interest on it are now due.

To 9th interrogatory. That he is a citizen of the State of Indiana and a resident of Clark county.

To 14th interrogatory. That payment of his said note has been requested in no other way than by said notices mentioned in his answer to 5th interrogatory.

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He has heard the answer of his co-defendant Collum carefully read, and except the responses to the 2d, 3d, 4th, 5th, 6th, 9th, and 14th interrogatories, he adopts the whole of said answer as his own, and in all respects applies the language of it to his part of this case, and alleges that it is true as to himself and his part of this case.

GEORGE SCHWARTZ.

R. CRAWFORD, *p. d.*

STATE OF INDIANA,
*Floyd County, ss:*

Said George Schwartz makes oath and says his foregoing answer, so far as stated on his knowledge, is true, and so far as stated on information or belief he believes it to be true.

GEORGE SCHWARTZ.

Subscribed and sworn to this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

THOS. L. SMITH.

The answer of Samuel Buttorff to the bill of complaint of Adam Ogilvie and others, exhibited in the United States court for the district of Indiana against the Knox Insurance Company and said Buttorff and others, said Buttorff answers and says as follows:

To 2d interrogatory. That he is informed and believes that said Sophia Buttorff did not subscribe nor authorize any person to subscribe for stock in said insurance company, unless her giving her note and procuring Simon Buttorff to accept a bill, as hereinafter mentioned, was such a subscription in law, which he is advised it was not.

109

To 3d interrogatory. That he is informed and believes she was fraudulently induced, and being so induced she gave the note stated in the plaintiffs' bill, with said Samuel as security, and procured said Simon to accept a bill for $700, payable to said insurance company, which included $100 on her account; but said Samuel is informed and believes she did so wholly in consequence of said fraud, and he denies that there was any valid consideration for said note and said bill as to said $100, or that he is legally bound to pay said note, or said Simon said part of said bill.

To 4th interrogatory. That he admits said note was dated, due, and payable as stated in plaintiffs' bill, and that said bill of exchange was stated in his answer to third interrogatory, and he is informed and believes no payment has been made on either of them.

To 5th interrogatory. That he admits such calls of payment on said stock as alleged in plaintiffs' bill, and that said Sophia received two notices by mail of two calls of ten per cent. each, and he believes she received but two, and he does not know the dates of them.

To 6th interrogatory. That he admits said note and bill are wholly unpaid; and if valid they and all interest on them are now due.

110 To 14th interrogatory. That he is informed and believes that payment of said note and bill has not been demanded in any other way than by such notices as are mentioned in his answer to 5th interrogatory.

Said Samuel has heard the answer of his co-defendant Collum carefully read, and he says he is informed and believes that the false representations therein alleged to have been made by said Carnan to said Collum were not made by said Carnan to said Sophia, but were made by him as such agent to said Simon, who repeated them to said Sophia at the time and just before she gave said note; and said Simon also at the same time informed her of the amount of said insurance company's liabilities the 31st of March, 1850, as appeared by said paper, exhibit "Z," described in defendant Mitchell's answer. Said Samuel is informed and believes that said statement of the amount of liabilities in said paper is false and fraudulent, but that said Sophia believed said statement, and the false representations repeated to her by said Simon as aforesaid, and had then no means of knowing their falsity, and that she gave said note and procured said $100 to be covered in said acceptance, wholly in consequence of said false statement and representations, and would not have done so but for said statement and representations.

111 With the above qualification and excepting the responses to 2d, 3d, 4th, 5th, 6th, and 14th interrogatories, said Samuel adopts all of said Collum's answer, and alleges that, as he believes, the whole of its language is applicable to his part of this suit, and with the above qualifications and exception he is informed and believes the whole of it is true as to himself and his part of this case.

Said Sophia died September 26, 1851, and no person has taken letters of administration on her estate.

SAMUEL BUTTORFF.

R. CRAWFORD, *Solicitor.*

STATE OF INDIANA,
*Clark County, ss:*

Said Samuel Buttorff makes oath and says his foregoing answer, so far as stated on his knowledge, is true, and so far as stated on information and belief he believes it to be true.

SAMUEL BUTTORFF.

Subscribed and sworn to this 15th of October, 1852, before me, a judge of the supreme court of Indiana.

And thereupon it is agreed by the parties, by Samuel Judah, for the complainants, and R. Crawford, for all the defendants except the Knox Insurance Company, where any defendants in this suit are sued as securities only, and their principals have answered and the sureties have not, it is agreed the answers of the principals shall be taken as the answers of their sureties also. It is also agreed that the answer of Eddy and wife would be the same substantially as that of James Mitchell, and the answer of the latter is to stand as that of
112 Eddy and wife *mutatis mutandis*. All exceptions taken to any one of the answers are to be considered as taken to all the other answers, so far as the same are applicable.

And thereupon the complainants, by their solicitor, Samuel Judah, esq., filed certain exceptions to the answer of William F. Collum, as follows, to wit:

*Exceptions.*

1. The answer to the first interrogatory is insufficient and evasive in this: The interrogatory is as to facts, the organization of the company, and its transaction of business. The answer neither admits nor denies these facts, but refers to a certain pretended organization and pretended transaction of business.

2. The answer to the second interrogatory is insufficient and evasive. The interrogatory is as to a fact: Did defendant subscribe, &c. The answer is that he did not in person or by an agent, unless the execution of the notes was in law a subscription, which, he is advised, it is not.

3. The answer to the interrogatory is, so far as relates to the fraud, &c., alleged by way of excuse or defence, impertinent. But this will be best considered in the seventh exception below.

4. The answer to the fifth interrogatory is in part evasive. It neither admits nor denies notice as to all the calls.

5. The answer to the fourteenth interrogatory is in part evasive; it refers to the answer to the fifth interrogatory, and must stand or fall with it.

113 6. The answer to fifteenth interrogatory is insufficient and evasive. This interrogatory is as to facts. The organization of a branch office at Jeffersonville and the transaction of business there. The answer only states a pretended organization and transaction of business; and then the answer is also impertinent in this: that it

sets up the want of authority to organize the branch, which is not in question.

Exception 7. The defence set up in the answer is in substance as follows: That Robert N. Carnan, an agent of said insurance company, came to Jeffersonville, &c., to induce Collum to give the notes, &c., as such agent, falsely and fraudulently represented certain matters as to the condition of the company. We except to all this part of the answer, because we say it is no defence, and is therefore immaterial, irrelevant, and impertinent. It is no defence because it does not appear that Carnan had authority to make the representations, or that the company had knowledge that he did make them.

8. The second part of this defence, that there are other necessary parties defendant, is immaterial and irrelevant. There is no allegation that the complainant knew, at the commencement of this suit, that these persons were debtors of the company, and there is no allegation that they are now debtors.

SAMUEL JUDAH,
*For Complainants.*

And thereupon, on agreement of parties, it was ordered by the court as follows, to wit: It is agreed by the parties that the
114 exceptions filed by the complainants to the answer of the defendants, or any of them, shall stand for argument at the next term of this court; that the general replication shall be considered as filed now, and is waived; and that this cause shall stand at the next term of this court as at issue at the present term, and that either party may take depositions of witnesses during the ensuing vacation, and under the State law regulating the taking of depositions; said depositions to be considered as published whenever filed in the office of the clerk of this court.

SAMUEL JUDAH.
R. CRAWFORD,
*For all the defendants except the Knox Insurance Company.*

And on the same day aforesaid come now Ernest C. Anglerecht and Robert Barthe, and by Samuel Judah, their solicitor, file their petition to be made party complainants in this cause, in these words, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioners, Ernst C. Anglerodt and Robert Barthe, traders in partnership under the firm of Angelrodt and Barthe, of St. Louis, Mo., and citizens of the State of Missouri, respectfully state that they are creditors of the Knox Insurance Company, as follows: that on the 18th day of May, 1852, at a circuit court of the United States for the district of Indiana, by the consideration of the said court, they recovered judgment against the said the Knox Insurance Company for the sum of four thousand seven hundred and ninety-four dollars ninety-
115 one cents and costs, and that afterward execution was issued on said judgment and has been returned, no property found to satisfy the same; and further, that the said the Knox Insurance Com-

pany is utterly and notoriously insolvent, and that said judgment is wholly unpaid and due.

Whereupon your petitioners pray that they may be made parties complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants and the said the Knox Insurance Company and others are defendants, and may thereon recover such relief as may be just and equitable.

SAMUEL JUDAH,
*For Petitioner.*

And afterwards, to wit, on the day and year aforesaid, at a circuit court of the United States aforesaid, begun and holden before the honorable judge aforesaid, Mr. Judah, for Morrison McCloskey, comes and files his petition to be made a party complainant in this cause, in the words and figures following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioner, Morrison McCloskey, a citizen of the State of Pennsylvania, respectfully states that he is a creditor of the Knox Insurance Company, as follows: that on the 12th day of August, 1852, and at the August term, 1852, of the circuit court of Knox county, Indiana, by the consideration of said court, your petitioner re-
116 covered judgment against the said the Knox Insurance Company for the sum of ($1,974 20) nineteen hundred and seventy-four dollars twenty cents, and costs, on which execution was afterwards issued to the sheriff of said county and has been returned no property found to satisfy the same; that the said Knox Insurance Company is wholly and notoriously insolvent, and the said judgment is in full force, wholy unpaid and due.

Whereupon your petitioner prays that he may be made a party complainant to the bill of complaint, now pending in this court, wherein Adam Ogilvie and others are complainants and the Knox Insurance Company and others are defendants, and that he may thereon recover such relief as may be just and equitable.

SAMUEL JUDAH,
*For Plaintiff.*

And thereupon it is ordered, and by agreement of parties it is so ordered, that the answer of the defendants filed shall apply to said complainants.

And afterwards, to wit, at a circuit court of the United States aforesaid, begun and holden before the honorable judge aforesaid, on the day and year aforesaid, Mr. Judah, for John E. Shapsheir and Simon Massey, filed their petition to be made party complainants in this cause, in the words following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioners, John E. Shapsheir and Simon Massey, citizens of the State of Kentucky, respectfully state that they are creditors

117 of the Knox Insurance Company, as follows: that on the 25th of August, 1851, and at the August term, 1851, of the circuit court of Knox county, Indiana, by the consideration of said court, they recovered judgment against the said the Knox Insurance Company for the sum of three thousand nine hundred and sixty-four dollars and ninety-four cents, and costs; that on said judgment execution was afterwards issued to the sheriff of said county, and has been by him returned no property found to satisfy the same; that the Knox Insurance Company is wholly and notoriously insolvent, and that the said judgment is in full force, wholly unpaid and due.

Whereupon your petitioners pray that they may be made parties complainants to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants, and that they may thereon decree such relief as may be just.

SAMUEL JUDAH, *for Petitioners.*

And thereupon it is ordered, and by agreement of parties it is so ordered, that the answers of the defendants filed shall apply to said complainants.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court of the United States aforesaid, begun and holden before the honorable judge aforesaid, comes now Leonard L. Hyatt
118 by Mr. Judah, and files his petition to be made a party complainant in this cause, in the words and figures following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioner, Leonard L. Hyatt, a citizen of the State of Mississippi, respectfully states that he is a creditor of the Knox Insurance Company, as follows: that on the 25th day of February, 1852, and at the February term, 1852, of the circuit court of Knox county, Indiana, by the consideration of said court, your petitioner recovered judgment against the said the Knox Insurance Company for the sum of two thousand six hundred and fifty-five dollars and costs, on which judgment execution was afterwards issued to the sheriff of said county, and has been returned by him, no property found to satisfy the same; that the Knox Insurance Company is wholly and notoriously insolvent, and that the said judgment is in full force, wholly unpaid and due. Whereupon your petitioner prays that he may be made a party complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants, and that he may thereon recover such relief as may be just, &c.

SAMUEL JUDAH, *for Petitioner.*

And thereupon it is ordered, and by agreement of parties it
119 is so ordered, that the answers of the defendants filed shall apply to said complainants.

And afterwards, to wit, on the day and year aforesaid, at a circuit court of the United States aforesaid, begun and holden before the honorable judge aforesaid, Charles M. Harding, by Mr. Judah, appears and files his petition to be made a party complainant in this cause, in the words following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioner, Charles M. Harding, a citizen of the State of Illinois, respectfully states that he is a creditor of the Knox Insurance Company, as follows: that on the 25th day of August, 1852, and at the August term, 1852, of the circuit court of Knox county, Indiana, by the consideration of the said court, your petitioner recovered judgment against the said the Knox Insurance Company for the sum of three thousand five hundred and ninety-eight dollars and seventy-five cents; that the said judgment remains in full force, and wholly unpaid and due; that the said the Knox Insurance Company is notoriously insolvent, and wholly destitute of property subject to execution.

Wherefore, inasmuch as otherwise he will be without any remedy for the recovery of the money so as above stated due to him, he respectfully prays that he may be permitted, as a creditor, to
120 come in with the complainants in a certain suit in chancery now pending in this court, wherein Adam Ogilvie and others are complainants, and the Knox Insurance Company and others are defendants, and thereby, as such creditor, with said complainants, recover such relief as may be just.

SAMUEL JUDAH, *for P. N.*

And it is ordered that the same be continued until the next term of this court.

And afterwards, to wit, on the day and year aforesaid, at a circuit court of the United States aforesaid, begun and holden before the honorable judge aforesaid, James Montgomery and Samuel Montgomery, by Mr. Judah, come and file their petition to be made a party complainant in this cause, in the words and figures following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioners, James Montgomery and Samuel Montgomery, residents of Louisville and citizens of the State of Kentucky, respectfully represent that they are creditors of the Knox Insurance Company, as follows: that on the 17th day of August, 1852, and at the August term, 1852, of the circuit court of Knox county, Indiana, by the consideration of the said court, your petitioners recovered judgment against the said the Knox Insurance Company for the sum of nineteen hundred and eight dollars thirty-eight cents and costs;

that the said judgment remains in full force, wholly unpaid and
121 due, and the said the Knox Insurance Company is insolvent notoriously, and wholly destitute of property subject to execution. Whereupon, insomuch as otherwise they will be without any remedy for the recovery of the money so as above stated due to them, they respectfully pray that they may be permitted, as creditors, to come in with the complainants in a certain suit in chancery now pending in this court, wherein Adam Ogilvie and others are complainants, and the Knox Insurance Company and others are defendants, and thereby, as such creditors, with said complainants, receive such relief as may be just.

SAMUEL JUDAH, *for Pet.*

And it is ordered that the same be continued until the next term of this court.

And afterwards, to wit, at a circuit court of the United States for the district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the 16th day of May, in the year of our Lord one thousand eight hundred and fifty-three, that being the first judicial day of the May term of said court, before the Hon. Elisha M. Huntington, judge of said district of Indiana.

Benjamin M. Thomas, esq., for R. N. Bryne, comes and moves the court, on his petition filed, to be made a party complainant in this cause, in these words, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioner, R. M. Bryne, a citizen of the State of Mich-
22 igan, respectfully represents that he is a creditor of the Knox Insurance Company, as follows: that is to say, that on the 25th day of February, 1852, and at the February term, 1852, of the circuit court of Knox county, in the State of Indiana, by the consideration of said court your petitioner recovered judgment against the said the Knox Insurance Company for the sum of eighty dollars and seventy-three cents, and also his costs, amounting to the sum of eighty-six cents, on which said judgment an execution of *fieri facias* was afterwards, to wit, on the 13th day of July, 1852, issued from the clerk's office of said last-mentioned court, which said execution was afterwards, to wit, on the day last aforesaid, returned by the sheriff of said county, to whom the same had been issued, that there was no property, real or personal, to satisfy the said execution; that the said the Knox Insurance Company is utterly and notoriously insolvent, and that the said judgment is due in full force and wholly unpaid. Wherefore your petitioner prays that he may be made party complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants and the said the Knox Insurance Company and others are defendants, and that the petitioner's said judgment, interest, and costs, may be paid in full out of the assets in the said bill mentioned, or *pro rata* with the claims of the other cred-

itors, and that he may receive such further and other relief as may be just, &c.

B. M. THOMAS,
*For Petitioner.*

123 And day is given.

And afterwards, to wit, on the same day last aforesaid, at said court aforesaid, before said judge aforesaid, comes now George A. Trowbridge and Oliver Noys, by Benjamin Thomas, esq., and move the court upon petition filed in the words and figures following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioners, George A. Trowbridge and Oliver A. Noys, citizens of the State of New York, respectfully represent that they are creditors of the Knox Insurance Company, as follows: that is to say, that on the 19th day of August, 1852, and at the August term, 1852, of the circuit court of Knox county, in the State of Indiana, by the consideration of said court, your petitioners recovered judgment against the said the Knox Insurance Company for the sum of twenty-seven hundred and eighty-six dollars and seventy-six cents, and costs amounting to eighty and one-half cents; on which said judgment execution was afterwards, to wit, on the 24th day of September, 1852, issued from the clerk's office of said court to the sheriff of said county, and said execution returned no property found to satisfy the same; that the said the Knox Insurance Company is wholly and notoriously insolvent, and that the said judgment is in full force, wholly unpaid, and due; wherefore your petitioners pray that they may be made parties complainant to the bill of complaint now pending in the
124 said court wherein Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants, and that the claim of the said petitioners may be paid out of the assets in said bill mentioned in full, or *pro rata* with the other creditors, and that they may receive such further and other relief as may be just, &c.

B. M. THOMAS,
*For Petitioners.*

To be made party complainants in this cause, and day is given.

And afterwards, to wit, on the day and year last aforesaid, at said court aforesaid, before said judge aforesaid, comes now John Coulson, by B. M. Thomas, esq., and moves the court, upon petition filed, in these words, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioner, John Coulson, a citizen of the State of Maryland, respectfully represents that he is a creditor of the Knox Insurance

Company, as follows: that is to say, that on the 25th day of February, 1852, and at the February term, 1852, of the circuit court of Knox county, in the State of Indiana, by the consideration of the said court, your petitioner recovered judgment against the said the Knox Insurance Company for the sum of two thousand five hundred and seventy-two dollars and eighty cents, together with costs amounting to eighty-four cents, on which said judgment an execution was
125 afterwards, to wit, on the 13th day of July, 1852, issued from the clerk's office of said court, and, said execution being a *fieri facias*, was on the same day returned by the sheriff of the said county, to whom the same had issued, that no property, real or personal, was found to satisfy said execution; that the said the Knox Insurance Company is wholly and notoriously insolvent, and that the said judgment is in full force and wholly unpaid and due. Wherefore your petitioner prays that he may be made a party complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants and the said the Knox Insurance Company and others are defendants, and that the said petitioner's claim may be paid in full out of the assets in said bill mentioned, or *pro rata* with the other creditors, and that he may receive such further and other relief as may be just, &c.

B. M. THOMAS,
*For Petitioner.*

To be made a party complainant in this suit, and day is given, &c.

And afterwards, to wit, on the day and year aforesaid, at the said court aforesaid, before the hon. judge aforesaid, Benjamin M. Thomas, esq., for Hebbard & Co., comes and moves the court, upon petition filed, to be made party complainants in this suit in the words and figures following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioners, Hebbard & Co., citizens of the State
126 of Ohio, respectfully represent that they are creditors of the Knox Insurance Company, as follows, that is to say: that on the 25th day of February, 1852, and at the February term, 1852, of the circuit court of Knox county, in the State of Indiana, by the consideration of the said court, your petitioners recovered judgment against the said the Knox Insurance Company for the sum of seven hundred and forty dollars and fifty-one cents, and costs, on which said judgment an execution of *fieri facias* was afterwards, to wit, on the 13th day of July, 1852, issued from the clerk's office of said county; which said execution was on the day last mentioned returned by the sheriff of said county, to whom the same had been issued, that there was no property, real or personal, to satisfy the same; that the said the Knox Insurance Company is utterly and notoriously insolvent, and that the said judgment is due, in full force, and wholly unpaid; wherefore your petitioners pray that they may be made parties complainant to the bill of complaint now pending in this court, wherein

Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants, and that the judgment of your said petitioners, with the interest and costs, may be paid in full out of the assets in the said bill of complaint mentioned, or *pro rata* with the claims of the other creditors, and that they may receive such further and other relief as may be just, &c.

B. M. THOMAS,
*For Petitioners.*

127 And day is given the parties.

And afterwards, to wit, on the day and year aforesaid, at the said court aforesaid, before the hon. judge aforesaid, comes now, John P. Morton and Henry A. Griswold, by B. M. Thomas, esq., and moves the court, upon the petition filed, in the words and figures following, to wit:

*To the honorable the circuit court of the United States for the district of Indiana:*

Your petitioners, John P. Morton and Henry A Griswold, citizens of the State of Kentucky, respectfully represent that they are creditors of the Knox Insurance Company, as follows, that is to say: that on the 25th day of February, 1852, and at the February term, 1852, of the circuit court of Knox county, in the State of Indiana, by the consideration of the said court, your petitioners recovered judgment against the said the Knox Insurance Company for the sum of sixty dollars and twenty-five cents and costs of suit, on which said judgment an execution of *fieri facias* was afterwards, to wit, on the 13th day of July, 1852, issued from the clerk's office of said court, which said execution was on the same day returned by the sheriff of said county, to whom the same had been issued, that no property, real or personal, was found in his bailiwick to satisfy said execution, that the said the Knox Insurance Company is wholly and notoriously insolvent, and that the said judgment is due, is in full force, and wholly unpaid; wherefore your petitioners pray that they may be made par-
128 ties complainant to the bill of complaint now pending in the court, wherein Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants; and that the said judgment, interest, and costs may be paid in full out of the assets in said bill mentioned, or *pro rata* with the other creditors, and that they may receive such further and other relief as may be just, &c.

B. M. THOMAS,
*For Petitioners.*

To be made party complainants in this cause, and day is given the parties.

And afterwards, to wit, on the day and year aforesaid, at the said court aforesaid, before the hon. judge aforesaid, comes now Simon D. Powers, by Benjamin M. Thomas, esq., and moves the court, upon petition filed, in the words and figures following, to wit:

To the honorable the circuit court of the United States for the district of Indiana:

Your petitioner, Simon D. Powers, a citizen of Wisconsin, respectfully represents that he is a creditor of the Knox Insurance Company, as follows, that is to say: That at the August term, 1851, of the circuit court of Knox county, in the State of Indiana, to wit, on the 20th day of said month, by the consideration of the said court, your petitioner recovered judgment against the said the Knox Insurance Company for the sum of one thousand dollars, and costs of suit, on which said judgment an execution of *fieri facias* was afterwards issued
129 from the clerk's office of said court of said county, which said execution was thereafter returned by the sheriff of said county, to whom the same had been issued, that no property, personal or real, was found in the said county to satisfy said execution; that the said the Knox Insurance Company is utterly and notoriously insolvent, and that the said judgment is due, in full force, and wholly unpaid.

Wherefore, your petitioner prays that he may be made party complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants; and that the said judgment, interest and cost, may be paid in full, or *pro rata* with those of the other creditors, and that he may receive such further and other relief as may be just, &c.

B. M. THOMAS, *for Petitioner.*

To be made a party complainant in this cause, and day is given the parties.

And afterwards, to wit, at a circuit court aforesaid, on the day and year aforesaid, before the honorable judge aforesaid, comes now Abbey and Rose, by Benjamin M. Thomas, esq., and move the court on petition filed in the words and figures following, to wit:

To the honorable the circuit court of the United States for the district of Indiana:

Your petitioners, Abbey and Rose, citizens of the State of
130 Ohio, respectfully represent that they are creditors of the Knox Insurance Company, as follows, that is to say: That on the 25th day of February, 1852, and at the February term, 1852, of the circuit court of Knox county, in the State of Indiana, by the consideration of the said court, your petitioners recovered judgment against the said the Knox Insurance Company for the sum of three hundred and seventy-six dollars and ninety-nine cents, together with their costs, amounting to eighty and one-half cents, on which said judgment an execution of *fieri facias* was afterwards, to wit, on the 13th day of July, 1852, issued from the clerk's office of said court; which said execution was on the same day returned by the sheriff of said county to whom the same had been issued, that there was no property, real or personal, to satisfy said execution; that the said

the Knox Insurance Company is utterly and notoriously insolvent, and that the same judgment is due, in full force, and wholly unpaid.

Wherefore, your petitioners pray that they may be made parties complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants, and the Knox Insurance Company and others are defendants; and that the said judgment, interest and costs, may be paid in full out of the assets in said bill mentioned, or *pro rata* with the claims of the other creditors: and that they may have and receive such further and other relief as may be just, &c.

B. M. THOMAS, *for Petitioners.*

131 To be made party complainants in this suit, and day is given the parties, &c.

And afterwards, to wit, at the circuit court aforesaid, on the day and year aforesaid, before the honorable judge aforesaid, comes now Samson Cariss, by Benjamin M. Thomas, esq., and moves the court upon petition filed in the words and figures following, to wit:

To the honorable the circuit court of the United States for the district of Indiana:

Your petitioner, Samson Cariss, a citizen of the State of Maryland, respectfully represents that he is a creditor of the Knox Insurance Company, as follows, that is to say: That on the 19th day of August, 1852, and at the August term, 1852, of the circuit court of Knox county, in the State of Indiana, by the consideration of the said court, your petitioner recovered judgment against the said the Knox Insurance Company for the sum of two hundred and sixty-eight dollars and eleven cents, together with ninety-six cents of costs, on which said judgment was afterwards, to wit, on the 24th day of September, 1852, issued from the office of the said court an execution of *fieri facias* to the sheriff of said county, and which was, to wit, on the 27th day of September, returned by him, that no property, real or personal, could be found in his said bailiwick to satisfy the same; that the said the Knox Insurance Company is utterly and entirely insolvent, and that said judgment is due, is in full force, and wholly unpaid.

132 Wherefore, your petitioner prays that he may be made a party complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants; and that the said judgment, interest and costs, may be paid in full out of the assets in said bill mentioned, or *pro rata* with the claims of the other creditors, parties to the said bill; and that he may have such further and other relief as may be just, &c.

B. M. THOMAS, *for Petitioner.*

To be made a party complainant in this cause, and day is given the parties.

And afterwards, to wit, on the day and year last aforesaid, at the circuit court aforesaid, before the honorable judge aforesaid, comes

now Henry Covington, by Benjamin M. Thomas, esq., and moves the court on petition filed in the words and figures following, to wit:

To the honorable the circuit court of the United States for the district of Indiana:

Your petitioner, Henry Covington, a citizen of the State of Maryland, respectfully represents that he is a creditor of the Knox Insurance Company, by virtue of a judgment which your petitioner, by the name of H. Covington, recovered against the said the Knox Insurance Company on the 20th of August, 1852, at the August
133 term, 1852, and by the consideration of the circuit court of Knox county, in the State of Indiana, for the sum of four hundred and thirty-nine dollars and thirty-one cents, together with the costs, amounting to ninety-six cents; on which said judgment there was issued from the clerk's office of the said court, afterwards, to wit, on the 24th day of September, 1852, an execution of *fieri facias* to the sheriff of said county, and was by him on the same day returned, that no property, real or personal, was found in his bailiwick to satisfy the same, or any part thereof; that the said the Knox Insurance Company is utterly and notoriously insolvent, and that the said judgment is in full force and wholly unpaid, and due. Wherefore, your petitioner prays that he may be made party complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants, and the said the Knox Insurance Company and others are defendants; and that the said petitioner's claim may be paid out of the assets in said bill mentioned in full, or *pro rata* with the other creditors; and that he may receive such further and other relief as may be just, &c.

B. M. THOMAS, *for Petitioner.*

To be made a party complainant in this suit, and day is given the parties, &c.

And afterwards, to wit, on the 30th day of May, in the year of our Lord one thousand eight hundred and fifty-three, at a circuit court of the United States for the district of Indiana, begun, continued,
134 and holden at Indianapolis, in said district, before the Hon. Elisha M. Huntington, judge of said district, on petition filed in the words and figures following, to wit:

To the honorable the circuit court of the United States for the district of Indiana, in chancery:

The petitioner, Adam Ogilvie and others, respectfully state that they are the complainants in a certain suit in chancery now pending in this court, wherein the Knox Insurance Company and others are defendants, and that since the last term of this court they have discovered that one George F. Savitts is a debtor of the said Knox Insurance Company as follows, to wit: That on or about the 15th day of July, 1850, one John Mitchell made his certain bill of exchange of that date, exhibited herewith and made a part hereof, and thereby

requested the said George F. Savitts ninety days after date to pay to the order of the Knox Insurance Company, for value received, five hundred dollars, and the said George then and there, by his writing indorsed on said bill, accepted the same, and became liable to pay the money mentioned therein, but has not as yet, though often requested to do so, paid the same, or any part thereof; and also that on or about the 9th day of March, 1850, the said George subscribed for certain shares of the capital stock of the said company, thirty in number, and thereby became a stockholder of said company; and for the payment of the sum of $2,700, being so much of the amount of said shares at $100
135 per share, the said George made his note of that date, exhibited herewith and made a part hereof, and thereby promised the said company to pay the said company the said sum of $2,700, without relief from valuation or appraisement laws, on demand, in such sums and at such times as might be duly assessed thereon by order of the directors to meet the exigencies of said company; and that on the same 9th day of March, 1850, the said George, with Mary J. Savitts, his wife, made their certain mortgage of that date to the said the Knox Insurance Company, exhibited herewith and made a part hereof, duly recorded in the recorder's office of Clark county, Indiana, in mortgage book No. 1, volume 1, letter A, pages 216 and 217, for certain lots of lands in the city of Jeffersonville, Indiana, described as lots number one, two, and three, in block No. seventy-nine, situated on Spring street, conditioned to be sold on the payment of the said note for $2,700, and the petitioners state and that after the making of said note various assessments were made thereon, as is stated in the bill in the said suit; that the said Savitts had notice thereof, and that all the money in said note mentioned is due and unpaid; wherefore your petitioners pray that said George F. Savitts, and Mary Jane, his wife, may be made defendants to the said suit, and that process issue of subpoena, and that they answer the matters stated in said bill and in this petition.

SAMUEL JUDAH, *For Pet.*

And, on motion of Mr. Judah for complainants, it is ordered
136 that George F. Savitts and Mary Jane Savitts, his wife, be made defendants to the complainants' bill, and that process of subpoena be issued, commanding them to answer the said petition and the bill of complaint filed herein in pursuance of the rules of this court.

And afterwards, to wit, on the day and year aforesaid, at a circuit court of the United States aforesaid, before the honorable judge aforesaid, comes now George W. Atchinson, by Mr. Judah, and files his petition to be made a party complainant in this suit, in the words and figures following, to wit:

To the honorable the circuit court of the United States for the district of Indiana:

Your petitioner, George W. Atchinson, of the city of St. Louis, Missouri, respectfully states that he is a creditor of the Knox Insurance

Company in manner following, that is to say: That by the consideration of the St. Louis court of common pleas in and for the county of St. Louis and State of Missouri, in a certain suit in said court wherein he was plaintiff and the Knox Insurance Company was defendant, lately, on the 15th day of December, 1853, it was adjudged that he, the plaintiff, recover of the said the Knox Insurance Company the sum of eleven hundred and seventeen dollars, and his costs, amounting to the sum of sixty-two dollars and thirty cents, and that afterwards execution was issued in due form of law on said judgment, and has been duly returned, no property found to satisfy the same; and
137 that said judgment is yet in full force, unreversed, and wholly unpaid.

The petitioner exhibits herewith the record of said judgment, and avers that the interest on the said judgment and costs now amounts to a large sum, $500, and prays to be made a party complainant to the suit now pending in this court, wherein Adam Ogilvie and others are complainants, and the Knox Insurance Company and others are defendants.

SAMUEL JUDAH, *for Pet.*

Which is ordered on the filing of a bond for costs in 90 days.

And afterwards, to wit, on the day and year aforesaid, at the same court aforesaid, before the honorable judge aforesaid,

The court being sufficiently advised on the motion heretofore made, order that said Trowbridge and Noyes be made party complainants herein, on the filing of a bond for costs approved of by the clerk, and day is given.

And afterwards, to wit, on the day and year aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

It is ordered that Samson Cariss be made a party complainant in this suit, on the filing of a bond for costs approved of by the clerk.

And afterwards, to wit, at a circuit court of the United States aforesaid, on the day and year aforesaid, begun and holden before the honorable judge aforesaid,
138 It is ordered that the said petitioner, Henry Covington, be made a party complainant in this suit, on the filing of a bond for costs approved of by the clerk.

And afterwards, to wit, on the day and year aforesaid, at the circuit court of the United States aforesaid, begun and holden before the honorable judge aforesaid,

It is ordered that said petitioner, John Coulson, be made a party complainant in this suit, on the filing of a bond for costs approved of by the clerk.

And afterwards, to wit, on the day and year aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

It is ordered said petitioners, Hibbard and others, may be made party complainants, on the filing of a bond for costs approved of by the clerk in 90 days.

And afterwards, to wit, on the day and year aforesaid, at a circuit

court of the United States aforesaid, before the honorable judge aforesaid,

It is ordered that said petitioner, Bryne, be made a party complainant in this suit, on the filing of a bond for costs approved of by the clerk in 90 days.

And afterwards, to wit, on the day and year aforesaid, at a circuit court of the United States aforesaid, begun and holden before the honorable judge aforesaid,

139 It is ordered that said petitioners, John P. Morton and Henry A. Griswold, be made party complainants in this suit, on the filing of a bond for costs in 90 days approved by the clerk.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

It is ordered that said petitioner, Simon D. Powers, be made a party complainant in this suit, on the filing of a bond for costs in 90 days approved of by the clerk.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

It is ordered that said petitioners, Abbey et al., be made party complainants in this suit, on the filing of a bond for costs in 90 days approved by the clerk.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

It is ordered that said petitioner, Charles N. Harding, be made a party complainant in this suit, on the filing of a bond for costs herein in 90 days approved by the clerk.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

140 It is ordered that said petitioners, James Montgomery and Samuel Montgomery, be made party complainants in this suit, on the filing of a bond for costs in 90 days approved of by the clerk

And afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-three, at a circuit court of the United States for the district of Indiana, begun, continued, and holden at Indianapolis, in said district, before the honorable H. H. Leavitt, judge of the southern district of Ohio,

Comes now Samuel Judah, esq., and files bond for costs for Charles N. Harding, Leonard L. Hyatt, James Montgomery and Samuel Montgomery, Shropshier & Massey, McCloskey, Anglerodt, and Barthe, who were admitted party complainants in this suit.

And afterwards, to wit, on the sixth day of December, in the year last aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

Comes now Samuel P. Hall and John Ludlow, by B. M. Thomas, esq., and Elisha R. Sprague and Henry R. Root, by S. Yandes, esq., and file their petition to be made party complainants herein, which petition is in these words, to wit:

To the honorable the circuit court of the United States for the district of Indiana:

Your petitioners, Samuel P. Hall, John Ludlow and Elisha R. Sprague, and Henry R. Root, respectfully and respectively state that they are respectively creditors of the Knox Insurance Company, as follows, to wit:

141 Samuel P. Hall, on the 9th of September, 1853, in the circuit court of Knox county, Indiana, by the consideration of the said court, recovered judgment against the said the Knox Insurance Company for the sum of five thousand six hundred and seventy-five dollars, ($5,675;) that an execution of *fieri facias* issued thereon October 27, 1853, and was returned October 29, 1853, no property found.

John Ludlow recovered judgment in the same court against the same company on the 27th day of August, 1851, for two thousand six hundred and sixty *and sixty* dollars and nine cents, ($2,660 09,) on which an execution of *fieri facias* was issued October 27, 1851, and which execution was returned March 1, 1852, no property found.

Elisha R. Sprague and Henry R. Root recovered judgment in the same court against the same company on the 8th day of September, 1853, for two thousand eight hundred and sixty-two dollars and sixty-seven cents, ($2,862 67,) on which an execution of *fieri facias* was issued October 13, 1853, and on the first day of November, 1853, returned, no property found, real or personal, by the sheriff of said county, to whom the several executions aforesaid had issued.

That the said judgments remain in full force, and wholly unpaid, and due. That the said the Knox Insurance company is notoriously insolvent and totally destitute of property subject to execution.

Wherefore, as otherwise your respective petitioners will be without any remedy for the recovery of the claims so as above set forth, they pray that they may respectively be permitted as creditors

142 to come in with the complainants in a certain suit in chancery now pending in this court, wherein Adam Ogilvie and others are complainants, and the Knox Insurance Company and others are defendants, and thereby, as creditors with the said complainants, recover a pro rata proportion of the funds and assets with the said complainants, and have such further and other relief as may seem just; and your petitioners will, &c.

B. M. THOMAS,
*For Petitioners.*
S. YANDES,
*One of Solicitors for Sprague and Root.*

And afterwards, to wit, on the 8th day of December, in the year last aforesaid, at a circuit court of the United States aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

Comes now B. F. Baker & Co., by B. M. Thomas, esq., and moves the court upon petition filed in the words and figures following, to wit:

To the honorable the judges of circuit court of the United States for the district of Indiana:

Your petitioners, Benjamin F. Baker, Andrew Low, and Rowland Whitney, citizens of the State of Kentucky, respectfully show that on the 31st of May, 1852, by the consideration of said court, they recovered against the Knox Insurance Company, a corporation created by the laws of the State of Indiana, and a citizen of Indiana, a judgment for five hundred fifty-one dollars and thirty-nine
143 cents, together with their costs of suit taxed at, to wit, $50.

And afterwards, to wit, on the —— day of ———, 1852, they sued out of said court a writ, under the seal of said court, which commanded the marshal of said district, of the property of said insurance company, to make said sum of money and costs, and have the same before said court to render to your petitioners, which writ said marshal afterwards, to wit, on the —— day of ———, 1853, returned to said court with his indorsement thereon, that said insurance company had no property in his district out of which to make any of said moneys. Said judgment is in full force, wholly unsatisfied, and said moneys are still due your petitioners.

Adam Ogilvie and others have filed their bill in chancery in said court in behalf of themselves as judgment creditors, and of all others who may come in as parties thereto, and against said insurance company and divers others alleged to be indebted to said insurance company, praying that said debtors may be decreed to pay said plaintiffs; which suit in chancery is now pending in said court. Your petitioners, therefore, pray that they may be made parties plaintiffs thereto, and recover their said debt and costs, and have all other proper relief. And, as in duty bound, &c.

THOMAS, &c.,
*For Petitioners.*

To be made a party complainant herein, which is granted upon the filing of a bond approved of by the court.

And afterwards, to wit, on the seventeenth day of May, in
144 the year of our Lord one thousand eight hundred and fifty-four, at a circuit court of the United States aforesaid, begun, continued, and holden at the place aforesaid, before the Hon. Elisha M. Huntington, judge of said district,

By agreement of parties, Mr. Judah, for complainants, and Mr. Crawford, for defendants, George W. Savitz and Mary J. Savitz, his wife, service of subpœna to answer the bill and amendment of complainants against them is acknowledged, and that the answer of defendants now on file shall stand for the answer of said Savitz and wife, who also admit the execution of the notes, bill, and mortgage stated in said amendment; and thereupon the complainants move the court to suppress the depositions taken by said respondents, of William F. Collum, G. F. Savitz, and George Schwartz, because said deponents were parties defendants, and interested as such; and after argument

had, the court give further time to hear their decisions thereon, and day is given.

And afterwards, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-four, at a circuit court of the United States aforesaid, begun, continued, and holden at the place aforesaid before the honorable judge aforesaid,

Come now, on this day, the parties by counsel, and the court being sufficiently advised in the premises, overrule the motion heretofore entered to suppress depositions; and thereupon, on motion of complainants, this cause is set down for hearing during the present
145 term of this court, upon bill, answers, exhibits, and depositions, &c., and day is given the parties.

And afterwards, to wit, on the 26th day of May, in the year last aforesaid, at the circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

Now comes the Crescent Manufacturing Company and N. H. Brigham, and file their several petitions to be made parties plaintiff in this suit, in the words and figures following, to wit:

To the honorable circuit court of the United States for the district of Indiana:

Your petitioner, the Crescent Manufacturing Company, which is a corporation created under the laws, and is a citizen of the State of Louisiana, respectfully shows: That on the 5th of September, 1853, by the consideration of the Knox circuit court, in the State of Indiana, she recovered against the Knox Insurance Company, which is a corporation under the laws of said State of Indiana, and a citizen of said State, a judgment for five thousand dollars for her damages in a certain suit in said court complainant of, together with her costs in that suit expended, taxed at, to wit, twenty dollars.

And afterwards, to wit, on the 23d of March, 1854, your petitioners sued out of said Knox circuit court a writ, tested by its clerk and seal, which commanded the sheriff of Knox county, in said State of Indiana, of the property of said Knox Insurance Company to make said damages and costs, and have the same before said court, to render to your petitioner; which writ, on the day last aforesaid, was put into
146 the hands of said sheriff to be executed, who afterwards, to wit, on the — day of ——, 1854, returned said writ with his indorsement thereon that said Knoxville Insurance Company had no property in his county out of which to make any of said moneys. Said judgment is in full force, and said moneys are still due your petitioner.

Adam Ogilvie and others have filed their bill in chancery in the said United States court in behalf of themselves, as judgment creditors, and all others who may come in as parties thereto, and against said insurance company and divers other persons alleged to be indebted to said insurance company, praying that said debtors may be decreed to pay said plaintiffs; which suit in chancery is now pending in said United States court.

Your petitioner therefore prays that she may be made a party

plaintiff thereto, and recover said damages, interest, and costs, and have all other proper relief. And, as in duty bound, &c.

THOMAS, &c., *for Petitioner.*

To the honorable circuit court of the United States for the district of Indiana:

Your petitioner, N. H. Brigham, a citizen of the State of Louisiana, respectfully shows: That on the 18th of March, 1854, he recovered, by the consideration of the Knox circuit court for Knox county, in said State of Indiana, a judgment against said Knox Insurance Company for fourteen hundred dollars, together with his costs in that suit expended, taxed at, to wit, twenty dollars. And on the 23d of said March he sued out of said Knox circuit court a writ, tested by
147 its clerk and seal, which commanded the sheriff of said Knox county of the property of said Knox Insurance Company to make said judgment and costs; which writ was then and there put into the hands of the sheriff of said county to be executed, who afterwards, to wit, on the — of March, 1854, returned said writ with his indorsement thereon that no property of said Knox Insurance Company was found in his county out of which to make any of said moneys. Said judgment is in full force, and wholly due your petitioners.

Adam Ogilvie and others have filed their bill in chancery in said United State court, in behalf of themselves and of all others who may come in to be made parties, and against said Knox Insurance Company, and others alleged to be indebted to said insurance company, praying that said debtors may be decreed to pay said plaintiffs, which suit is pending in this court.

Your petitioner therefore prays that he may be made a party plaintiff in said suit, and recover his said debt and costs, and have all other proper relief. THOMAS, &c., *for Petitioner.*

And it is thereupon ruled by the court that said petitioners be severally made plaintiffs in this suit.

And afterwards, to wit, on the 29th day of May, in the year last aforesaid, at a circuit court aforesaid, begun, continued, and holden at the place aforesaid, before the honorable judge aforesaid,

Now come the parties; and it appearing to the court that on the 12th day of May, 1853, and at the May term of the court, the follow-
148 ing persons filed their petitions to be admitted as joint complainants, to wit: John P. Morton and Henry A Griswold, R. N. Byrne, John Colson, Samson Cariss, George A. Trowbridge and Oliver Noys, Henry Covington, Abbey and Rose, and Hibbard and Company, and Simon D. Powers; and also that on the 6th day of December, 1853, Samuel P. Hall, John Ludlow, and Elisha R. Sprague and Henry R. Root, filed their petition to be admitted as said complainants, and were at said dates directed by the court to be so admitted of the respective date aforesaid. It is therefore ordered that the said parties be and are admitted as such parties complainant now for then, as of the above respective dates; and the bonds herein filed are approved.

And afterwards, to wit, on the second day of June, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

Come now Benjamin F. Baker, Andrew J. Low, and Robert Whitney, by S. Judah, esq., and file their petition in these words to wit:

149 To the honorable the judge of the circuit court of the United States for the district of Indiana:

Your petitioners, Benjamin F. Baker, Andrew J. Low and Robert Whitney, citizens of the State of Kentucky, respectfully represent that they are creditors of the Knox Insurance Company, as follows, viz: On the 31st day of May, A. D., 1852, and at the May term, A. D. 1852, of the circuit court of the United States, for the seventh circuit and district of Indiana, by the consideration of said court, your petitioners recovered a judgment against the said Knox Insurance Company of an action of debt, then pending in said court, for the sum of five hundred and fifty-one dollars and thirty-nine cents, ($551 39,) being for five hundred and twelve dollars and fifty cents debt, and thirty-eight dollars and eighty-nine cents damages; on which said judgment an execution was afterwards, to wit, on the 7th day of June, A. D. 1852, issued from the clerk's office of said court; and said execution was, on the 16th day of September, A. D., 1852, returned by the marshal of said district, to whom the same had issued, that no property, real or personal, was found to satisfy the said execution; that the said the Knox Insurance Company is wholly and notoriously insolvent, and that the said judgment is in full force, and wholly due and unpaid. Wherefore, your petitioners pray that they may be be made parties complainant to the bill of complaint now pending in this court, wherein Adam Ogilvie and others are complainants, and the said Knox Insurance Company and others
150 are defendants; and that the said petitioner's claim may be paid in full out of the assets in said bill set forth and mentioned, or pro rata with the other creditors; and that they may receive such other and further relief as to equity may belong, &c.

J. CAVEN, *for Petitioners.*

And, upon motion, they are admitted parties complainant to this suit; and thereupon come the parties by counsel, and, after reading the evidence to the court, this cause is continued until to-morrow morning, 8 o'clock, for further hearing.

And afterwards, to wit, on the third day of June in the year aforesaid, at the circuit court aforesaid, begun, continued, and holden at the place aforesaid, before the honorable judge aforesaid,

Come now this day the parties, by their solicitors; and this cause being set down for hearing, and arguments of counsel being heard, the court not being sufficiently advised in the premises, give the parties further day to hear their decision thereon, and day is given &c.

And afterwards, to wit, on the 7th day of June, in the year aforesaid, at a circuit court of the United States aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

This cause being set down for hearing upon bill, answers, exhibits, exceptions, &c., and arguments of counsel, it is continued until the next term of court, under advisement.

151 And afterwards, to wit, on the 9th day of December, in the year of our Lord one thousand eight hundred and fifty-four, the same being the twenty-sixth judicial day of the November term for said year, at a circuit court of the United States for the district of Indiana, begun, continued, and holden at Indianapolis, in said district, before the honorable Elisha M. Huntington, judge of said district,

On motion of Mr. Judah, for the complainants, it appearing to the satisfaction of the court that the bill in this case was prepared and filed and the case argued on demurrer, and depositions taken on each side, and the cause argued for submission at the expense of the parties represented in this court by Mr. Judah, and that other parties have been admitted as complainants since the filing of the bill who are now represented in this court by Mr. Thomas and others, and who have not contributed to the expense of the above proceeding: therefore, it is ordered that John L. Ketcham, master in chancery, inquire and determine the reasonable amount of the expenses for counsel and other fees to be allowed for the said proceedings and the proportions thereof which ought to be paid by the parties represented by Mr. Judah, and the parties represented by Mr. Thomas and others, respectively, that he notify Mr. Thomas and the other counsel of his determination therein, and make report of his proceedings to the next term of this court, and that at said term such parties show cause if they can why such contribution shall not be made; and this cause is continued.

152 And afterwards, to wit, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the same being the ninth judicial day of the May term for said year of the circuit court of the United States aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, Alfred Erskin, by Mr. McLean, comes and files his petition to be made a party complainant in this cause in the words and figures following, to wit:

Circuit court of the United States for the district of Indiana.

ADAM OGILVIE and others
*vs.*
THE KNOX INSURANCE COMPANY,
LEVI SPARKS, and others.

Your petitioner, Alfred Erskine, who petitions for the use of Calvin Corning, both residents and citizens of the State of Ohio, respectfully states that he is a creditor of the Knox Insurance Company, a corporation lately doing business in the State of Indiana, as follows: That at the October term of the superior court of Hamilton county, State of Ohio, in the year 1851, by the consideration of said court, your petitioners recovered a judgment against the said the Knox Insurance

Company, for the sum of six hundred and ten dollars and thirty cents and costs; that the said judgment remains in full force and wholly unpaid and due; that the said the Knox Insurance Company is notoriously insolvent and wholly destitute of property subject to execution; wherefore, inasmuch as otherwise he will be without any remedy for the recovery so as above stated due to him,
153 he respectfully prays that he may be permitted as a creditor to come in with the complainants in a certain suit in chancery now pending in this court, wherein Adam Ogilvie and others are complainants and the Knox Insurance Company and others are defendants, and thereby as such creditor with said complainants recover such relief as may be just.

N. C. McLEAN,
*Solicitor for Petitioner.*

And afterwards, to wit, on the first day of June, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

It appearing that on the petition of George W. Atchinson, heretofore filed, the said George was made a party complainant to this bill, it is now, by the consent of Mr. Judah for the complainant and Mr. Crawford for the defendants, ordered, that the answers of the defendants on file shall stand for their answers by the said George, and that this order shall stand as if made on the first day of May term, 1854.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court of the United States aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

Now at this time come the parties and the judges of this court; being opposed in opinion on certain questions arising in this cause, they order and direct that the following statement of the matters and questions upon which the opinions of the judges are so opposed be entered upon the record of this court; that the same be certified under
154 the seal of this court to the Supreme Court of the United States to be finally decided:

OGILVIE AND OTHERS, complainants,
*vs.*
THE KNOX INSURANCE COMPANY, COLLUM, AND OTHERS, defendants.

The complainants are the several creditors of the Knox Insurance Company holding judgment and executions, returned "No property," &c., against the company.

Collum and the other defendants, twenty-five in number, are charged as stockholders in default in the payment of their several stock subscriptions.

The bill charges, substantially, as follows: 1st. That some time before the 12th of February, 1850, the company was duly organized under its charter, and had authority to receive further subscriptions of stock; and that afterwards, at various times between that time and the 1st of June, 1850, Collum and the other defendants severally became subscribers for stock, and either paid in cash, or secured by note

or bill of exchange, ten per cent. of the amount severally subscribed, and for the balance made their notes or bills; and that the bills of exchange made for the ten per cent. was renewed by the other bills of exchange drawn in September and October, 1850, and the bill sets out all the securities remaining due and unpaid.

2d. That the complainants are creditors of the company by reason of losses on policies issued by the company at various times after the subscriptions of the defendants, and the judgments and executions are stated.

155 3d. That the company is destitute of property subject to execution, &c.

4th. That the company has neglected to enforce collection of the money due from the defendants.

5th. That the defendants refuse to pay on the pretence that their subscriptions were procured by means of certain false representations concerning the situation, prospects, and actual business of the company.

7th. And that the complainants are advised that it is not material to them, or to others who have dealt with the company, how or why the defendants became stockholders; that by becoming such the defendants gave credit to the company, by means whereof the complainants were induced to deal with it.

8th. That if the defendants, Battorff, Collum, Hughes, Sparks, and Savitz, and one Kegwin, a debtor, subscriber, not made a party because a citizen of Kentucky, acted as officer of the company throughout the year 1850.

9th. And that the defendants, nor any of them, did not at any time, in any manner, attempt to inform the public of the alleged facts now set up in defence.

The prayer is that the defendants pray, &c., and for general relief. The Knox Insurance Company answered, and admitted generally the facts stated in the bill, &c. Collum and the other defendants severally answered. The answers admit the executions of the secu-

156 rities by the defendants on account of stock subscribed by them, and set up as a defence substantially the following:

That Robert N. Carnan was an agent of the company to procure subscriptions of stock, and as such, in February, 1850, made to defendants certain false representations, by which they were induced to subscribe for said stock and give their said notes and bills. These representations were as to the amount of stock then subscribed and secured at Vincennes, and as to the amount of funds on hand; and that defendants had not at that time any means of knowing the accuracy of their representations.

The depositions of Collum, Savitz, and Schwartz (three of the defendants) was taken and offered to be read in evidence in behalf of the other defendants, but not in behalf of themselves, to prove the allegations of fraud set out in the answers. The complainants objected to the competency of said witnesses, because they were parties to this action, and the objections, by consent of the parties, was reserved to the hearing.

At the May term, 1854, this cause was submitted to the court on the bill, the answers, and the depositions, including the depositions of the

said Collum, Savitz, and Schwartz, which were then read, subject to the objection above mentioned; and after argument, the said cause was continued under advisement to the November term following. At the November term, 1854, the cause was continued to the May
157 term, 1855, under advisement, and now at the May term, 1855, under the pleadings and on the state of facts above set forth, the following questions occurred:

1. Are the depositions of said Collum, Savitz, and Schwartz, under the circumstances of this case, and to the effect above stated, competent as evidence for their co-defendants? And on this question the opinions of the judges were opposed.

2. Will the fraud of the agent of the Knox Insurance Company in procuring said subscriptions, notes, and bills, if sufficient to avoid said subscriptions, notes, and bills as against said insurance company, be a defence against the complainants in this suit? And on this question the opinions of the judges were opposed. Whereupon, it is ordered, according to the request of the complainants, and to the law in that case provided, that the foregoing statement of the pleadings and facts, which is made under the direction of the judges, be certified under the seal of this court, to the Supreme Court, to be finally decided.

And afterwards, to wit, on the 5th day of June, in the year last aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, comes now William C. Huff and Goodhue Ambroise, and file their petition herein in the words and figures following, to wit:

OGILVIE et al.
*vs.*
KNOX INSURANCE COMPANY.

The petition of William C. Huff and Goodhue Ambroise,
158 and also that of Simon D. Powers, show that the said Huff and Ambroise recovered, in the Knox circuit court, in the State of Indiana, on the 12th day of March, 1855, against the Knox Insurance Company aforesaid, judgment for the sum of six thousand sixty-one dollars and fourteen cents, and costs of suit, amounting to

That subsequently thereto an execution of *fieri facias* issued on said judgment, which execution was returned by the sheriff of said county on the 10th day of April, 1855, by the said sheriff, that there was no property found in said county subject to execution, real or personal. The petition also states that no portion of said judgment has been paid.

That the said Simon D. Powers recovered, in the said Knox circuit court, on the 18th day of August, 1851, against the said Knox Insurance Company, a judgment for one thousand dollars, and costs of suit, amounting to

That subsequently thereto an execution of *fieri facias* on said judgment, which execution was returned by the sheriff of said county on the 1st day of March, 1852, that there was no property, real or personal, found in his bailiwick to satisfy the said writ, or any part thereof. The respective petitioners therefore state that there is no

other chance of payment than to be admitted as joint complainants in this suit, and be decreed their just proportion of the assets involved in this proceeding, which they pray respectively may be done; and they will, &c.

B. M. THOMAS,
*Sol. for Petitioners.*

159 And afterwards, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and fifty-six, the same being the thirteenth judicial day of the May term for the year aforesaid, at a circuit court of the United States aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, come now the parties, and this cause is continued until the next term of this court.

And afterwards, to wit, on the twenty-seventh day of November, in the year aforesaid, at a circuit court of the United States aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, come now the parties, and after hearing a portion of evidence and argument of counsel, further time is given.

And afterwards, to wit, on the twenty-eighth day of November, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, come now the parties by their solicitors, and after hearing the argument of counsel, time is given the parties.

And afterwards, to wit, on the twenty-ninth day of November, in the year aforesaid, at a circuit court aforesaid, begun and
160 holden at the place aforesaid, before the honorable judge aforesaid, come the parties, and after hearing a further portion of the argument, day is given.

And afterwards, to wit, on the eleventh day of December, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, come now the complainants, by their solicitor, and file the report of the master in chancery, in these words and figures, to wit:

In circuit court of United States for the 7th circuit and district of Indiana.

ADAM OGILVIE et al.
*vs.*
THE KNOX INSURANCE COMPANY.

Whereas at the November term, 1854, on motion of Samuel Judah, esq., for complainants, it appearing to the satisfaction of the court that the bill in this case was prepared and filed, and the case argued on demurrer, and depositions taken on each side, and the cause argued for submission at the expense of the parties represented in this court by Mr. Judah; and that other parties have been admitted as complainants since the filing of the bill, who are now represented in this court by B. M. Thomas, esq. and others, and who have not contributed to the expense of the above proceedings: Therefore it is ordered that John L. Ketcham, master in chancery, inquire and determine the reasonable amount of the expenses for counsel and other fees to be

allowed for the said proceedings, and the proportions thereof
161 which ought to be paid by the parties represented by Mr. Judah, and by Mr. Thomas and others, respectively. That he notify Mr. Thomas and the other counsel of his determination therein, and make report, &c., at the next term of this court. And that at said term such parties show cause, if they can, why such contribution shall not be made, &c., which cause has been continued with said order from time to time, and now stands for November term, 1856.

The undersigned, commissioner as aforesaid, has allowed to Samuel Judah, esq., the sum of thirteen hundred and fifty dollars; to H. Bassett, clerk, fifty dollars; to the marshal one hundred and sixty-one dollars, making fifteen hundred and sixty-one dollars to be paid by those represented by S. Judah, esq., B. M. Thomas, esq., and others; making the sum of one and ninety-two hundredths of one per cent. on the several amounts of claims filed against said defendant. The amount of claims represented by B. M. Thomas, esq., is thirty-five thousand two hundred and twenty-eight dollars, as follows:

| | |
|---|---|
| Powers | $1,000 |
| Ludlow | 2,660 |
| McCann | 1,517 |
| Morton & Co. | 60 |
| Abbey & Rose | 377 |
| Abbey | 420 |
| Wardner | 62 |
| Caulson | 2,572 |
| Byrne | 80 |
| Hibbard & Co. | 740 |
| Cavington | 437 |
| Trowbridge | 2,786 |
| Cariss | 268 |
| Sprague & Root | 2,862 |
| Samuel P. Hall | 5,675 |
| Crescent Manuf. Co. | 5,000 |
| Buyham | 1,400 |
| Huff *et al* | 6,061 |
| Baker *et al* | 551 |
| | 35,228 |

162 The above per cent. makes a sum total to be paid by those represented by Mr. Thomas of about six hundred and seventy-five dollars; and the proportionate parts of said sum total will be awarded by said court, at its next term, against the creditors above named, according to said per cent., unless some reason against it be shown by said parties.

JOHN L. KETCHAM,
*Commissioner.*

To the honorable the circuit court of the United States, 7th circuit, and district of Indiana:

The undersigned, commissioner, reports that he caused a copy of the statement and assessment to be delivered to B. M. Thomas, esq., on the second day of October, 1856.

Respectfully,

JOHN L. KETCHAM.

Master's fee for investigation and report $50.

J. L. KETCHAM.

And after further argument heard, day is given.

And afterwards, to wit, on the thirtieth day of December, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, come now the parties, by their attorneys, and this cause is continued under advisement.

And afterwards, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, the same
163 being the twentieth judicial day of the May term for said year, of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, before the honorable John McLain and honorable Elisha M. Huntington, judge of said district.

At this time the complainants in the bill mentioned appeared by Mr. Judah, their counsel, and the defendant by Crawford, and it is ordered, adjudged, and decreed by the court that the bill of complainant be dismissed; and thereupon it is ordered, on motion of said complainants, that an appeal be granted to the said complainants in this case to the Supreme Court of the United States, on the bond of Samuel Judah, as security for the complainants, to be filed within six months, in the sum of five hundred dollars.

Come now the parties, by counsel; and thereupon, on motion of Mr. Judah, solicitor for complainant, depositions of complainants are filed and ordered to be published, in the words and figures following, to wit:

Depositions taken at the office of Samuel Judah, in Vincennes, on Thursday, the 24th day of March, 1853, to be read in evidence in a suit in chancery in the circuit court of the United States for the district of Indiana, in which Ogilvie and others are complainants, and the Knox Insurance Company and others are defendants, taken
164 by consent, in the presence of Samuel Judah, attorney for the complainants, and of Randall Crawford, attorney for the defendants, other than the Knox Insurance Company.

Cyrus M. Allen, on part of complainant, being sworn, says:

1st question. State your connexion with the Knox Insurance Company from the 7th January, 1850.

Answer. From the 7th January, 1850, to either January or February, 1851, I was the secretary of said company; from May, 1851, to the present time, president of said company.

165 2d. State whether you are now a stockholder in said company, or have any interest in it.

2d answer. In November, 1851, the board of directors of said company, at a meeting thereof, authorized and assented to the transfer of the five shares of stock held by me in said company, the same being fully paid out; but said transfer has never been actually made. At the time said order was made, I considered the stock of no value whatever, nor do I now consider it of any value.

3d. State if notices of the various assessments upon the capital stock of said company was properly given up, and how?

3d answer. I am unable to say; Mr. Ryan was the secretary at the time a portion of the assessments were made, and I have no knowledge of notices, except as obtained from him; an assessment of ten per cent. was made on the capital stock of the company, on 17th December, 1850, of which the stockholders were notified by mail; the notices to Jeffersonville stockholders were, I think, sent by mail to Mr. Savitz, to be by him delivered, but of this I am not positive, as Mr. Ryan attended to that duty.

4th. State your knowledge of the employment and authority of Robert N. Carnan to procure subscriptions to the capital stock of said company, and especially from the defendants, the Jeffersonville stockholders.

166 4th answer. At a meeting of the board of directors of the Knox Insurance Company at their office, on the 12th day of February, 1850, among other proceedings of said board, the following resolution was by said board adopted:

*Resolved*, That Robert N. Carnan be appointed to procure subscriptions to the capital stock of this company, with power to appoint assistants in different points of the west.

Mr. Carnan was, at the date of said meeting, the president of the company, and it was under the instruction aforesaid, and by the authority of said resolution, that Mr. Carnan procured the subscriptions of a part of the defendants herein, amounting, I think, to about $44,000. Mr. Carnan had no authority other than conferred by said resolution, and as president and director of said company.

5th. State whether an exhibit of the affairs of the Knox Insurance Company made by you, as secretary of the company, dated April 22, 1850, of the state of the company on the 31st March, 1851, marked exhibit "Z," as part of the answers of some of the defendants, is correct or not.

5th answer. Some time in the month of April, I think, 1850, an exhibit of the condition of the company was made from the books thereof; not having the exhibit before me, I can only speak of its contents from recollection. It showed the receipts and disbursements of the company to a particular time—I think the 31st March—and

167 showed a balance of either 25,000 and odd dollars or 26,000 and odd dollars. Said exhibit was correct, and showed the condition of said company up to the time purported by it, so far as the same

was known or shown by the books of said company. It was prepared by Mr. Ryan, the then bookkeeper of the company, and signed by me, as secretary, and I think was under the seal of the company, though of the latter I am not positive.

Said exhibit was afterwards, and in either August or September of the same year, compared with the books of the company by Messrs. George F. Savitz and William Hughes, a committee sent on the part of the Jeffersonville directors and stockholders to examine into the affairs of said company, and by them stated to be correct, and correspond with the books of said company. The above statement by Savitz and Hughes was made in the office of said company, and in my presence, and that of several of the directors of said company.

6th. State if the subscriptions of stock taken by Carnan at Jeffersonville, or by any agent appointed by him, were entered upon the books of the company, and received by said company.

6th answer. The subscriptions of all the defendants were taken by either Mr. Carnan or by others appointed by him; they were reported to the company, entered upon the books containing a list of the subscribers to the capital stock, with the names and numbers of
168 shares taken and subscribed by each individual, and also entered upon the ledger for stockholders of said company; certificates of stock were likewise issued to each stockholder, and delivered.

7. State whether the defendants exercised their rights as stockholders, by voting for directors of said company, or otherwise.

Answer. No election for directors was held after said subscriptions were made, until the difficulty between the Jeffersonville branch and the branch at Vincennes. At the time said subscriptions were made there were four vacancies in the board of directors, which were filled by the board at Vincennes by the election of Levi Sparks, Simon Battorff, James Raigar, and William Hughes, to represent the interests of the Jeffersonville stockholders in said company; said directors acted as a local board of said company at Jeffersonville, and kept a minute of their proceedings.

7. State the time at which the committee from Jeffersonville, consisting of Savitz and Hughes, visited the office at Vincennes, and whether any of the stockholders at Jeffersonville were in the office at Vincennes previous to that time; and if so, what and where?

7th answer. Said committee visited the office at Vincennes in either August or September of 1850—I think in August; I know of no stockholder at Jeffersonville visiting the office prior to that time.

169 8th. State what you know, if anything, of objections being made by any of the Jeffersonville stockholders to further subscriptions being made to the capital stock of said company; when made and by whom.

Answer. In the month of May, 1850, I was at Jeffersonville, and had an interview with George F. Savitz, the agent of the company, and *ex officio* secretary of the local board at Jeffersonville. I also spoke to several other stockholders, but don't now recollect who they were. Mr. Savitz stated that it was the wish of the Jeffersonville stockholders that no further subscriptions should be made until after the July meeting, at which time a dividend was expected to be declared;

that it was the wish of the Jeffersonville stockholders that the first dividend should be distributed over as small an amount of stock as possible, that the dividend might be larger on each share of stock. I cannot now recollect any particular stockholder with whom I conversed, but am certain that this opinion was expressed by persons owning a majority of the stock at Jeffersonville.

9th. State if the persons with whom you then conversed were apprised of the true condition of the company, and if the directors at Vincennes expected a dividend in July.

Answer. So far as the condition of the company was known at Vincennes, the local board and all the stockholders at Jeffersonville with whom I conversed were informed of the true condition of the company; and the directory at Vincennes expected a dividend, at the July meeting, of 25 per cent. At the time of the conversation above spoken of I was informed by the Jeffersonville stockholders of a loss of
170 $50,000 at Owensboro, Kentucky, which had occurred between the time of my leaving home in Jeffersonville.

10th. State what you know, if anything, of the demand of payment from the various parties of the notes and bills sued on.

Answer. Assessments were made, as stated in my answer to 3d interrogatory. As to any special demand of payment beyond notice of the assessments, I know nothing.

11th. State when you first heard of the objections of the defendants, or any of them, to the validity of their subscriptions.

Answer. I do not now distinctly recollect; the first intimation I had of dissatisfaction on the part of the Jeffersonville stockholders was about the time the committee visited Vincennes, in August; I had not then heard of any objection on account of validity of subscriptions. A few days after said committee visited Vincennes I learned that there was some misunderstanding with reference to a certified statement furnished by me as secretary, being "Z," referred to above; I telegraphed to Mr. Savitz to have a meeting of the directors or local board at Jeffersonville, and immediately went to Jeffersonville, where I met the local board; at that meeting I think nothing whatever was said at that time about the validity of their subscriptions, and said board said that they would take time to consider as to what was best to be done between that time and the first of
171 January following; I heard first that some or all of the stockholders objected to the validity of their subscriptions.

12th. When did losses so accumulate on the company that its prosperity became doubtful?

Answer. From July, 1850, to March, 1851.

13th. State all you know about the New York stock transaction and the knowledge of the Jeffersonville defendants, or any of them.

Answer. There was subscribed, of what was usually called New York subscriptions, the number of eight hundred and seventy-five shares, being $87,500, which was approved by the directors of the company at a meeting held on the 5th January, 1850, and certificates of stock issued and delivered; afterwards, and about the 12th of February, 1850, circumstances inducing the belief on the part of the directory at Vincennes that the New York stockholders were not act-

ing in good faith, when said directory adopted a resolution requiring all stockholders to pay 10 per cent. on their subscriptions and secure the residue by mortgage on real estate or good personal security; that said New York stockholders failed to secure their said subscriptions, when their stock was forfeited, their notes returned, and the certificates of stock issued to them by the company were returned to said company, and after Carnan returned with the Jeffersonville subscriptions. Whether the subscribers at Jeffersonville were informed of these facts at the time they made their subscriptions I am un-
172 able to say; I had no conversation with any of them with reference to it until after the subscriptions were made. The first conversation I had with any of them was as late as the tenth of May, 1850, when the matter was freely spoken of between Savitz and myself and others, but I cannot mention any particular individual. No dissatisfaction was expected, but, on the contrary, all I conversed with approved it, and had made their subscriptions with knowledge that such course was to be pursued as stated by them. Adjourned to 2 o'clock p. m.

Since the adjournment I have executed and assigned to Joseph G. Bowman the certificates for the five shares of stock spoken of in answer to 2d interrogatory. Said assignment is made under the resolution of board of directors of date of November 17, 1851; the same is made without consideration, and said assignment is made without any knowledge of the same on the part of Mr. Bowman and without anything being paid by him.

*Cross-examined.*

1st. Explain how your stock has been fully paid out.

Answer. First by the payment of 5 per cent. on the amount of their shares at the time of subscribing; also by the payment first of 5 per cent. on two shares at the time of subscribing, and afterwards under the resolution of the board of directors of 12th February of 5 per cent. additional; the residue of said stock was paid in cash, except $200 issued on my salary as an officer of the company. The cash payment was made by the payment of my proportion of a draft of five
173 thousand dollars, drawn to pay losses by the company, and indorsed by J. H. N. Wise, Heberd Burtch, Maddox, Brooks, Bowman, and myself. Said draft was drawn about the 23d January, 1851, with the agreement and understanding on the part of the indorsers and directors that if said draft had to be paid by the indorsers, they should have credit for the amount of their stock notes.

Question. State if, at the time the exhibit "Z," referred to in your answer to 5th interrogatory, was shown at Jeffersonville to Savitz and others, the company had not intelligence of divers losses which had not been entered on the books of said company.

Answer. I think not; the losses of the company at the agencies were reported at the end of each month and entered upon the books of the company. I know of no losses occurring at any of the agencies during the month of March, 1850, except at the St. Louis, Missouri, amounting to some eight thousand dollars; and I know of no

other losses during that month, though I am not positive that other losses did not occur at the time said exhibit was produced to me by Mr. Savitz; he had a knowledge of said losses at St. Louis, and that arrangements had been made for the same.

3d. Explain what you mean by your answer to 6th interrogatory when you say the Jeffersonville subscriptions were received by the company.

Answer. That on Mr. Carnan's return from Jeffersonville, at a meeting of the board of directors, he informed them that he had procured subscriptions to the amount of some $40,000; certificates
174 of stock were thereupon issued to the several subscribers for the amounts respectively subscribed, and the notes of the subscribers for ninety per cent. on their subscriptions were filed with the proper officer of the company. I do not wish to be understood as saying that said subscriptions were approved by any formal resolution of the board of directors, but the same were always recognized by the board of directors; and at a meeting of the board of directors, of December 17, 1850, was, by preamble and resolutions, recognized said subscriptions as a part of the capital stock. No resolution of the board of directors was ever adopted directing the issuing certificates. No entries were made on the company's books except by the secretary, clerk, bookkeeper, and president, as to the delivery of certificates and the date of issuing the same. I know they were issued and delivered to Mr. Savitz, and I learned from him that they were delivered to the several subscribers by him; said certificates were issued on 2d and 9th March and 2d and 13th May. My knowledge of the local board at Jeffersonville, keeping a minute of their proceedings, is obtained from others and from the record of their proceedings. I know of my own knowledge that they held one meeting, having been present, in the month of September, 1850, I think. I had no conversation with any of the Jeffersonville stockholders as to
175 the amount of stock subscribed and secured at Vincennes prior to the time at which Savitz and Hughes visited Vincennes. I don't mean to be understood, in answer to ninth interrogatory, as having any reference whatever to the stock of said company, but merely to receipts, disbursements, and liabilities of the company, independent of the stock.

State when the $87,500 of New York subscriptions were obtained; by whom subscribed, and when.

Answer. The subscriptions were made at different times. The first subscriptions were made prior to August, 1849, and at the November meeting of the board of directors $50,000 of the New York subscriptions were approved by the board, viz: H. F. Tallmadge, 50 shares; John B. Haskins, 25 shares; Edward Eldridge, 25 shares; Zaphaniah Platt, 30 shares; H. B. Schoolcraft, 20 shares; Charles H. Stewart, 30 shares; W. T. Dellegan, 25 shares; Charles Mix, 20 shares; G. W. Chester, 50 shares; W. E. Eldridge, 30 shares; J. W. Westervelt, 50 shares; N. E. Shoomaker, 25 shares; Samuel Stiles, 50 shares; S. W. Croul, 20 shares; J. H. Colton, 50 shares. These subscriptions were made by Benjamin S. Whiting, as attorney in fact for the several parties, and at the time the books were first opened

for stock. Afterwards, on the 5th day of January, 1850, Mr. N. T. Eldridge, the agent of the company at New York, at a meeting of the board of directors, at Vincennes, other subscriptions were reported, amounting to the sum stated. These subscriptions were as
176 follows: W. F. Dellegan, 25 shares; John B. Haskins, 25 shares; H. B. Schoolcraft, 20 shares; Edward Eldridge, 25 shares; H. F. Talmadge, 50 shares; Samuel Coul, 50 shares; Benjamin C. Dulger, 50 shares; J. W. Westervelt, 50 shares; Wilmot Williams, 50 shares; R. Acherly, 50 shares; John Lovejoy, 50 shares; Ashbell Jones, 50 shares; Fred. Mason, 20 shares; E. C. Delaran, 10 shares; E. W. Chester, 50 shares; Benjamin C. Dulcher, 50 shares; N. E. Eldridge, 50 shares; Zephaniah Platt, 30 shares; C. H. Stewart, 30 shares; Samuel Stiles, 50 shares; W. D. Nichols, 10 shares; D. W. Townsend, 30 shares; S. Remington, 50 shares; J. H. Colton, 50 shares.

On these subscriptions I do not know, of my own knowledge, that anything was actually paid. The only knowledge I have on that subject was the presentation of several certificates of deposit, specifying that the money was deposited in some bank (I don't now recollect what bank) in New York; notes for the 95 per cent. were given, but no indorser or other security. Before the subscriptions last made the five per cent. was deposited, as shown by Mr. Eldridge, the agent of the company in New York, and notes taken for balance, without security; also a small portion only of the cash payment, say $300, was used by the company; the residue was directed to be returned when the New York subscribers failed to secure their stock, as also their stock notes. In my conversation with the Jeffersonville stockholders relative to New York subscriptions I mentioned the fact that they (the New Yorkers) had refused to secure their stock; that from their conduct we supposed they were disposed to act unfairly,
177 and that for that reason the board of directors had required the payment of 10 per cent. and the securing the stock notes; that they had failed to do so, and the directors had determined to supply their places with western stockholders. Every stockholder at Jeffersonville with whom I conversed expressed himself as understanding the matter from the first, and as understanding the object of the resolution to be to force the New York subscribers either to secure their subscriptions or leave the company, and were pleased that the latter had been the result. The object of the company in appointing Mr. Carnan to solicit subscriptions was to supply the place of the New York subscribers if they failed to secure. The resolution requiring 10 per cent. to be paid and subscriptions secured was passed 12th of February, 1850. About four weeks from this time the stock notes of the New Yorkers were directed to be given up to them. Their accounts were credited in full, and the certificates of stock returned, with the exception of $13,000, viz: N. E. Eldridge, $5,000; H. R. Schoolcraft, $2,000; Zephaniah Platt, $3,000; and Charles H. Stewart, $3,000; they saying that they would comply with the resolution of February 12, 1850. They did not, however, and said New York subscribers were not afterwards, in any way, recognized as stockholders. On the 22d day of February, 1850, there had been sub-

scribed out of the New York subscription 115 shares of stock, and were what was usually called the Vincennes and Wabash stock, upon which five per cent. in cash was paid at the time of subscribing, and notes executed for the balance, without security. These sub-
178 scriptions were all made prior to 1st of February, 1850; between that time and 25th of April there were subscribed
155 shares of what was called Wabash subscriptions, exclusive of the New York and Jeffersonville subscriptions. The schedule marked "A," C. M. Allen, is, I believe, a correct list of the stockholders, excluding the Jeffersonville and Clark county and New York subscribers, with the date at which their several certificates of stock were issued, their places of residence, the number of shares subscribed by each, the amount paid thereon in cash, the amount paid otherwise than in cash, and the amount still due. All payments made in claims against the company were made by the purchase of claims for losses; and further saith not.

CYRUS M. ALLEN.

Adjourned to Friday morning, March 25, 1853, when the same counsel being present as on yesterday, Robert N. Carnan was called by complainants, and being by me duly sworn, testified as follows:

1st interrogatory. State your connexion with the Knox Insurance Company from 1st January, 1850, and also whether you have any interest whatever in the stock of that company, or otherwise; and if so, what?

1st answer. I was president of said company on the 1st day of January, A. D. 1850, and remained president until the first Monday of January, A. D. 1851. I have no interest whatever in the stock of the said company.

179 2d question. State whether, and when, in the spring of 1850, you was appointed an agent for the Knox Insurance Company to procure subscriptions for stock, the nature of your authority, and all your transactions, if any, under it.

I was appointed agent to procure subscriptions to said stock some time in the month of February, A. D. 1850. About the 20th of said February I proceeded, by way of Mount Pleasant, to Jeffersonville, to procure such subscriptions. I saw Mr. Thomas Brooks at Mt. Pleasant, and he told me that he would have about $12,000 of subscriptions to said stock by my return, and advised me to go to New Albany or Jeffersonville to procure subscriptions. After passing through New Albany, I went to Jeffersonville. I saw several of the present subscribers to said stock; show them my authority, *authority*, and a statement of the then condition of the company, made out by Mr. Ryan, the clerk of the company, and certified by Mr. Allen, the secretary. I made no representations of the condition of the company other than that shown by said statement. I do not know whether that statement was correct or not; I told them that we had various agents in Iowa, Wisconsin, Michigan, and some of the southern States, and that those agents generally remitted in drafts on New York; that eastern exchange was not very salable at Vincennes; that the bank generally had more eastern exchange than

could be disposed of in this place, and that in all probability we would send our eastern exchange to the office there for sale.

180 There was a great deal of conversation between a few men at Jeffersonville and myself prior to their subscriptions. I cannot recollect all that was said, but assuredly did not intend to make the impressions upon their minds that there were seventy-five thousand dollars of said stock at that time held by the citizens of the Wabash, and never was aware that they were under that impression until about two months after the subscriptions were made. I was at that time, to wit, some time in May, in Jeffersonville, and saw Mr. Savitz at the office. He told me that they had taken about $67,000 of stock at that place. I replied to him that I was sorry to hear it, for they had a good deal more stock than we had; and as it was the understanding that we were to take as much stock on the Wabash as they did at Jeffersonville, I should have to return home immediately, and have our part of the stock taken. Mr. Savitz replied that it was the wish of the Jeffersonville stockholders that no more stock should be taken until after the first of July. I told him that in case the company should be unfortunate, I was afraid that that state of things might produce a difficulty. He urged me to see Mr. Battorff. I went to see Mr. Battorff, and told him that I was very sorry to hear that they had increased their stock to $67,000; that it was largely more than we had, and that unless I returned home, and had our stock increased to that amount, I was afraid there would be some

181 difficulty hereafter. Mr. Battorff made the same reply that Mr. Savitz did—that the stockholders at Jeffersonville were opposed to any further subscription until after the first of July next, and insisted that no more stock should be taken until after that time. When I was first at Jeffersonville there was about $37,000 of stock taken; and it was understood when I left, that this amount was to be increased to $50,000, but I had nothing to do with the taking the balance of the stock above $37,000. I explained to those persons who took the $37,000 our connexion with the New York subscribers; that the people at Vincennes had refused to take stock to any amount as long as they had anything to do with the concern; that they had proposed to surrender that stock upon refunding to them the 5 per cent. they had paid; that we had accepted their proposition; and from what I was told and heard, our wealthy men would take stock largely if they could get responsible men in the west to go in with them. It was the understanding at that time that the Wabash men and Jeffersonville folks should each in the end hold $75,000 of said stock. But the stockholders subscribed by them upon no condition whatever but those that were reduced to writing, and were to be submitted to our board for adoption. These conditions were submitted to the board at Vincennes by me, and were adopted, and certificates of stock issued to the Jeffersonville subscribers for $37,000.

I admit that upon my return, and after the loss at St. Louis,

182 I was deceived in the amount of stock which the citizens of Vincennes took.

3d. State, so far as you can, any conversation you had with the

defendant Collum, or in his presence, and especially in relation to $75,000 of Wabash stock, or $40,000 of eastern funds.

Answer. I have no recollection of anything more than is stated above.

*Cross-examined.*

1st. When did you dispose of your stock, to whom, and what price; and was it paid up?

Answer. I think it was in the fall of 1851; it was discharged by money, and an allowance by the board for services; money, $250; allowance about $150, and the certificate of stock assigned, I think, to Mr. Bowman by me for the benefit of Messrs. Burtch, Maddox, and himself, upon their paying the balance of it.

2d. In your answer to 2d direct question you state that you showed your authority as agent, a statement of the condition of the company, to some of those who subscribed for stock at Jeffersonville. Please state at what time this was, and whether that authority was in writing or not.

Answer. I think it was in the latter part of February, 1850; the authority was a written copy of resolutions of the board appointing me.

3d. Did you not state to some of those who subscribed for stock at Jeffersonville what amount of stock had been subscribed at Vincennes and on the Wabash? And if you did, what amount did you state had been so subscribed?

183 Answer. My impression is that I told them that there was, I presumed, about $40,000 taken on the Wabash at that time; and I came to the conclusion from what Mr. Brooks told me, as I passed through Mt. Pleasant, from Mr. Allen's telegraphing me while at Jeffersonville that Mr. Burtch would take $5,000 the day he telegraphed, and from what I had heard when I left home of what others would take, and from the amount taken before I left home.

4th. Was that all you told them as to the amount of stock subscribed at that time at Vincennes and on the Wabash?

Answer. I think it was the substance of what I told them, but cannot say it was all, as there were so many conversations.

5th. Where is the written statement of the condition of the company which you showed them at Jeffersonville at the same time; and can you state what its contents were?

Answer. I think it was returned at the office at Vincennes. I cannot state its contents exactly. I think it showed a balance in favor of the company of something like $30,000. I never shew them any other statement, as I recollect, but the one mentioned above.

6th. Did you not state to them at Jeffersonville that the company then had on hand $40,000 of eastern exchange, or to that effect?

Answer. I am very certain that I did not, and I am also very certain that I shew the exhibit alluded to above to every one with

184 whom I had any conversation on the subject, and who took stock. I might have said that we would probably hereafter have that amount.

7th. Did you not tell them at Jeffersonville that there had then been subscribed $75,000 of stock in said insurance company at Vincennes and on the Wabash, or to that effect?

Answer. I have no recollection of any such statement, and think it is a misapprehension of what I said.

8th. When you were at Jeffersonville in May, 1850, and were told by Savitz how much stock had been subscribed there, did you tell him or Simon Battorff how much had then been subscribed at Vincennes and on the Wabash, and paid or secured as the law required; and what did you tell either of them as to the amount?

Answer. I think I told Mr. Battorff that there was about $40,000 of stock taken here and in this vicinity. This was a mere surmise of mine. I did not intend to speak as knowing positively, (as explained above.)

9th. With whom was it the understanding at Jeffersonville that but $50,000 was to be taken at Jeffersonville, and afterwards that there were to be $75,000 taken at Jeffersonville, and the same amount on the Wabash?

Answer. The understanding was, I think, with those who subscribed at the time I was there; at least I am certain that was the understanding between Mr. Battorff and myself, or I am very much mistaken.

185

10th. What were the conditions on which they subscribed for stock at Jeffersonville, and which you reported to the board at Vincennes, and they approved, as stated in your answer to 2d direct question?

Answer. The conditions are contained in the by-law for the Jeffersonville board. I cannot recollect all. Some of them are that a vice-president should be elected, then a local board; that they should retain their 10 per cent., have the privilege of leaving it, and not be called on for it except to pay losses, &c.

11th. At what time did the Knox Insurance Company first do business by issuing policies of insurance?

Answer. I think about the middle of October, 1849.

12th. What amount of stock had been subscribed and paid, or secured, when the company first issued such policies?

Answer. There had been something upwards of $50,000 subscribed and secured by note of the stockholders.

13th. Give the names of the subscribers, and the number of shares each had taken, and whether any security at all had been taken for its payment.

Answer. I cannot do it from memory. This includes the New York stockholders, who only secured their stock by stock notes, without any security but their own notes.

ROBERT N. CARNAN.

186 The above depositions of Cyrus M. Allen and Robert N. Carnan, sworn to before me at Vincennes this 26th day of March, 1853.

D. McHENRY, *J. P.* [SEAL.]

The depositions of William F. Collum and others, taken by consent of parties, at the office of said Collum, in Jeffersonville, in the State of Indiana, to be read as evidence on behalf of the defendants, or some of them, in a suit pending in the circuit court of the United States for the district of Indiana, wherein Adam Ogilvie and others are plaintiffs, and the Knox Insurance Company, Levi Sparks, and others, are defendants in chancery, the taking of said deposition being commenced at 2 o'clock in the afternoon of August 15, 1853.

Said Collum, being first duly sworn, deposes as follows to questions asked by the defendants, (except himself and said insurance company,) the plaintiff objecting to his competency:

Question 1. Are you acquainted with Robert N. Carnan, of Vincennes, in said State of Indiana?

Answer. I am acquainted with him.

Question 2. Did you hear said Carnan, at said Jeffersonville, in February, 1850, say anything as to his being an agent of said Knox Insurance Company to procure subscriptions for stock in said insurance company? If yes, state particularly what time it was in said month, to whom he made the statement, and what he stated as to his said agency, and what, if anything, as to the amount of stock before then subscribed for in said insurance company.

187 Answer. In the latter part of February, 1850, said Carnan came to Jeffersonville, and said he was an agent of said insurance company to procure subscriptions for stock therein, and to establish a branch of said insurance company at said Jeffersonville; and he then told me, and others in my hearing, that there had been to the amount of $75,000 of stock in said insurance company subscribed for at Vincennes and on the Wabash river, and was secured. This statement was made in Simon Battorff's store. John S. Battorff was present, and I think said Simon.

Question 3. Was anything in that conversation said as to the amount of exchange said insurance company then had? If yea, state fully what was said on that subject.

Answer. He stated, as a reason for establishing a branch of said insurance company at Jeffersonville, that they then had on hand from thirty to forty thousand dollars of eastern exchange, which they could sell to better advantage at Jeffersonville than at Vincennes, and that, as soon as the arrangement could be made, they would send that exchange to Jeffersonville to the agent to be sold.

Question 4. At the time the above statements were made by said Carnan do you know whether any subscription for such stock had been made at Jeffersonville?

Answer. I think no subscription for such stock had then been made at Jeffersonville.

188 Question 5. Did you hear said Carnan make said statement more than once; if yea, how often?

Answer. He repeated them to me several times; I cannot say exactly how often.

Question 6. At the time said statements were so made and repeated did you know or have the means of knowing whether the same were

true or false? and if yes, state your knowledge or means of knowledge on that subject.

Answer. I then had no means of knowing the truth or falsity of them, and, from his statements and character, I believed them to be correct.

Question 7. At any of the times you have mentioned did said Carnan show you, or offer to show you, any written statement of the condition of said insurance company?

Answer. No; he did not.

Question 8. Did said Carnan tell you what amount of stock he wished to have subscribed at Jeffersonville; if yes, what was the amount?

Answer. I do not think he told me the amount.

Question 9. Did you learn at any time that the foregoing statement of said Carnan as to amount of stock subscribed at Vincennes and in the Wabash, and the amount of exchange on hand, was untrue; if yes, at what time did you learn so?

Answer. The exchange never came, and I did not learn as to the amount of stock subscribed till after Messrs. Savitts and Hughes returned from Vincennes, where they went as a committee in September, 1850.

189 *Cross-examined by Mr. Judah for the plaintiffs.*

Question 1. How many times had said Carnan been here on that subject before you subscribed?

Answer. I think I subscribed the first time he was here; I did not, however, subscribe any paper for stock, as I remember, but I gave a note, either at the time or a few days after, and he gave a certificate of stock, or rather a memorandum. I never got any certificate from the insurance company for the stock.

Question 2. How did you pay, or secure the 10 per cent. on your stock?

Answer. I gave an acceptance for $200 in June, 1850, which was taken up and a new one given September 28, 1850.

Question 3. When said Carnan told you there was $75,000 of stock subscribed, did that include the New York stock.

Answer. I understood it was exclusive of the New York stock; that there was that amount of *bona fide* and reliable stock on the Wabash and at Vincennes. He spoke also of there being some nominal stock at New York.

Question 4. Was there an agency of said insurance company established at Jeffersonville, and was there notice of it given in the newspapers?

Answer. I believe there was.

Question 5. Was there any understanding between you and said Carnan as to the amount of stock to be taken, respectively, at
190 Jeffersonville and at Vincennes?

Answer. Carnan was anxious that a certain amount should be taken at Jeffersonville, but I don't recollect the amount. I don't know of any understanding that an equal amount should be taken at each place.

*Direct examination again.*

Question 1. Do you not mean to say, in answer to plaintiffs' 4th question, that a notice of such agency was published in the newspapers?

Answer. I have no recollection of ever seeing any such publication, and don't know that it was published.

And further says not.

W. F. COLLUM.

Also the deposition of George F. Savitz, taken in behalf of said defendants, (except said insurance company.) Said Savitz, being first duly sworn, deposes as follows, in answer to questions, (plaintiffs objecting to his competency:)

Question 1st. Were you an agent of the Knox Insurance Company to procure subscriptions of stock in said company at Jeffersonville; if yes, when did you become such agent? Did you procure any subscriptions for such stock; and whom did you procure to subscribe?

Answer. I was appointed as an agent of said insurance company about March 9, 1850, and was directed to obtain subscriptions of stock; and I procured Henry French, Benj. F. Marsh, John Dixon, John F. Read, Dutee Underwood, George Schwartz, Simon Battorff, (for $1,000,) Sophia Battorff, Thomas S. Dean, George W.
191 Schwartz, Sarah Maberry, Cynthia Maberry, Wm. G. Armstrong, Carter J. Logan, John D. Woodburn, Thomas M. Eddy, William Leutz, James Smith, James Schwartz, Thomas W. Prather, James Kegiom, (for $5,000,) James Mitchell, and Benjamin Taylor, to subscribe.

Question 2d. What, if any, representations as to the condition of said insurance company, or as to the amount of stock therein subscribed at Vincennes and on the Wabash, or as to the amount of exchange said insurance company had on hand, did you make to all or any of those you procured so to subscribe?

Answer. I was not at Jeffersonville when said Carnan was first there in February, 1850; Doc. W. F. Collum, Samuel H. Patterson, and others, told me, after my return, that said Carnan had stated here that seventy-five thousand dollars of stock in said insurance company had then been subscribed at Vincennes and on the Wabash; that they had $40,000 of eastern exchange on hand, and the design was to send it here to be sold. On the 9th of March, 1850, I received my appointment as such agent from said Carnan; I think I repeatedly mentioned to him, in a general way, the statements so reported to me by said Collum, Patterson, and others; and said Carnan never corrected them, though I do not know that I at that time asked him directly if they were correct. Afterwards, in procuring persons to subscribe for said stock, I believe I, in all instances, told them that there had then been $75,000 of stock subscribed for at Vincennes and on the Wabash,
192 and that the company was in a very flourishing condition, and had about $40,000 of eastern exchange, which they wished to send to Jeffersonville to be sold.

Question 3d. Did you so tell the persons you procured to subscribe before or after their subscription?

Answer. Before their subscription and probably after, too.

Here the taking of this deposition was adjourned till to-morrow morning at 9 o'clock a. m.

JACOB GLOSSBRENNER, *J. P.* [SEAL.]

AUGUST 16, 1853.

Taking of said Savitz's deposition is resumed at 10 o'clock a. m.

Question 4th. State in what way persons became subscribers; whether they subscribed any stock book, or other book or paper; and if yes, what kind of a book or paper?

Answer. They signed a bill or note for 90 per cent. of their subscriptions, and either paid the cash or gave a bill or note for 10 per cent. of it; they signed no book or other paper; I think that generally, when notes were given as above for the 10 per cent., they were soon after taken up, and bills of exchange given in place of them.

Question 5th. Did you have a conversation in May, 1850, with Cyrus M. Allen; if yes, was anything said, and what, as to whether the Jeffersonville stockholders did or not wish more stock subscribed for? State the particulars.

Answer. Said Allen was in Jeffersonville in the early part of May,
193 1850, and I told him of the amount of stock then subscribed at Jeffersonville, and that I could increase it soon, but that from a written statement he then had with him of the condition of the insurance company, and from his statement that there would be a dividend in July then next of 25 per cent., I told him it was the wish of some of the stockholders here that the stock should not be increased till after the dividend; I had heard of the contents of said written statement a few days before it was shown to me by Allen.

Question 6th. At the time of said conversation with said Allen did you know, or had you in any way been informed, that less than $75,000 had been subscribed at Vincennes and on the Wabash? If yes, state how you knew it, or had been informed of it.

Answer. I had no knowledge that the stock at Vincennes and on the Wabash was less than $75,000; and I had no information on that subject, except that said Allen, during that visit, remarked to me that the stock at Vincennes was about $50,000; I paid no particular attention to this at the time, and did not know as it was intended to include any more than subscribers living at Vincennes; I do not remember whether this remark by said Allen was made before or after I had mentioned to him the wish of some Jeffersonville stockholders that no more stock should be subscribed till after the dividend.

Question 7th. At the time of said conversation with Allen, state if you can whether any of the Jeffersonville stockholders had
194 any information, or means of information, that the stock subscribed at Vincennes and on the Wabash was less than $75,000; and if you can, state the information they had.

Answer. I do not know of any of them having any information, or means of information, on that subject.

Question 8th. Did you and William Hughes go to Vincennes for the purpose of examining into the amount of stock and condition of said insurance company; if yes, when did you go, and when return?

Answer. We went there for that purpose; we started in the beginning of September, 1850, and returned some time between the middle and the last of said month.

Question 9th. State, if you can, when the last meeting of the board of directors at Jeffersonville was holden?

Answer. On the 13th of August, 1850.

Question 10th. When did you first ascertain the true amount of stock subscribed at Vincennes and on the Wabash?

Answer. When Hughes and I visited Vincennes in September, 1850; I had a suspicion on the subject a short time before, and it was in consequence of such suspicions that Hughes and I went to examine.

Question 11th. State how you came to have suspicions on the subject at first.

Answer. R. N. Carnan was at Jeffersonville just before and at the time of the meeting of the board, August 13, 1850, and was
195 desirous the Jeffersonville stockholders should raise funds to pay a loss at Owensborough; the Jeffersonville subscribers were unwilling to do so, without first having a statement of the condition of the insurance company; Carnan then telegraphed for such a statement, and the annexed statement, marked "Defts. Ex. W," was received in reply; in it I observed the stock was stated at $97,000; this was what excited my suspicions.

Question 12. Had you, after said statement, Ex. W, was received, any conversation with said Carnan as to the amount of stock as therein stated? If yes, what did you and he say on the subject to each other?

Answer. I called his attention to the fact that the stock was stated in that paper as only $97,000, and they had $75,000 at Vincennes, and we had at Jeffersonvile $69,300. He said he supposed the $97,000 must be an error, for the stock at Vincennes was about $45,000, and there was some $15,000 more taken on the Wabash, which was good but had not been secured, and he supposed was not included in the $97,000. I told him that those amounts did not make their stock up to $75,000, and he replied that he supposed there was some $10,000 or $12,000 of the Jeffersonville stock not included in the $97,000; he said the receipts of the insurance company, since the first quarterly statement, had averaged from $8,000 to $10,000. The words "paid," in the margin of "Ex. W," were written by Carnan, who said the losses opposite to which he wrote that word had been paid. I
196 asked him why it was they were in such a press for money, when they had reported they had $40,000 of eastern exchange, and their receipts had averaged $8,000 or $10,000 a month. He said they had actually paid out for losses $40,000, and that the gross amount of losses had been $50,000. I do not profess to state the exact language used, but I state the substance of the ideas conveyed.

Question 13. Did said Carnan in that conversation say anything as to there being any mistake or misunderstanding as to the subscrip-

tions at Vincennes and on the Wabash being $75,000? If yes, what did he say?

Answer. He did not say anything further than as stated in my last answer.

Question 14. Do you know whether certificates for stock were ever received by all or any of the Jeffersonville subscribers? If yes, state who received them, and how many.

Answer. I know some of them received such certificates, but I can't say who of them. I think Carnan handed me a bundle of them in March, and that they were all, or most of them, delivered by me to the persons for whom they were intended. But all the subscribers did not get certificates through me, and I never got any for my own stock.

Question 15. When you and Hughes were at Vincennes did you compare the statement of the condition of the insurance company, made by Ryan, dated April, 1850, with the books of the in-
197 surance company? If yes, was it or not correct, as compared with the books, and what, if anything, did you say to said Allen of its correctness?

Answer. Mr. Hughes and I had extracts made from the books of the insurance company, and compared said statements with them, and it agreed with them. I have no recollection of saying, or of Hughes saying to Allen that the statement agreed with the books. I may have said so, but am sure, if I did say so, I also said there must have been a large amount of losses known to them at the date of said statement which had not been entered on the books. I came to this conclusion, they must have known of other losses at the date of said statement from the dates of such losses, as I saw them entered on the book; that statement purported to show the condition of the insurance company on the 31st day of March, 1850. It was dated, (I think,) April 22, 1850, and was shown in Jeffersonville first, some time about 4th of May, 1850, and said Allen then told me there had been no other losses of which they were informed, except a small one in St. Louis.

Question 16. Do you know whether or not it was generally understood or believed in Jeffersonville that said Carnan had made statements as to the amount of stock subscribed at Vincennes and on the Wabash? If yes, what was he believed or understood to have stated?

Answer. I believe it was generally understood and believed
198 in Jeffersonville that said Carnan had stated here that there was $75,000 of stock subscribed in said insurance company at Vincennes and on the Wabash, and that they had $40,000 in eastern exchange on hand. "By the general belief," I mean to include such persons only as would be likely to take an interest in such matters.

Question 17. Was there any understanding, and if any, what, between you and said Carnan, or between any of the subscribers at Jeffersonville and Carnan, as to the amount of stock to be subscribed at Jeffersonville?

Answer. I do not know what understanding on that subject there may have been between Carnan and the other Jeffersonville subscribers. Between him and myself I always understood he was willing to have as much as I could get.

Question 18. Had you any conversation with said Carnan at Jeffersonville in or about May, 1850, in which he expressed any regret that so much stock had been subscribed at Jeffersonville; and that it was a great deal more than they had at Vincennes and on the Wabash, or anything to that or the like effect?

Answer. No; I never had any such conversation, or to any such effect.

Question 19. Did said Carnan, at any time, tell you anything as to William Burtch being a subscriber for stock; if yes, what did he tell you, and when?

199 Answer. He either told me, or said it in my presence, that William Burtch was a subscriber for $5,000 of said stock. I think it was in August, 1850.

Question 20. When you and Hughes were at Vincennes did you make known there the false representations under which the people at Jeffersonville had been induced to subscribe; if yes, to whom did you make it known, and what did you say?

Answer. I do not recollect that we did directly do so, either to Carnan or Allen; but we did tell Hebbard, Maddox, and one or more of the Wises, that the people at Jeffersonville had been deceived; that they had been told before they subscribed there was $75,000 of stock taken at Vincennes and on the Wabash. When, in fact, there had been but a small portion of that amount so taken; and that we did not know what the Jeffersonville subscribers would do on the subject; but that we thought, as things then stood, they would not do anything.

Question 21. Do you recollect of said Allen and Hebbard being at Jeffersonville shortly after your return; if yes, was anything and what said by you, or by any others, in your hearing to them, by way of objection to the manner in which the Jeffersonville people were induced to subscribe for said stock?

Answer. There was quite a number of the stockholders, together with said Allen and Hebbard, at Jeffersonville, at which Mr.

200 Sparks told *told* them the Jeffersonville subscribers felt they had been deceived very badly, and they were not disposed to do anything more, unless the Vincennes people could arrange the matter as to their stock so as to be satisfactory. The other Jeffersonville subscribers then present, so far as I know, acquiesced in what Sparks said.

Question 22. Did said Allen and Hebbard, or either of them at that time, or said Allen and Carnan at any time after you discovered the amount of stock actually subscribed at Vincennes and on the Wabash, make any promises as to making their stock up to $75,000; if yes, what did they say or promise, and which of them, and when?

Answer. At the time Allen and Hebbard were at Jeffersonville, they both, and I think both Allen and Carnan, immediately afterwards repeatedly said they would make up their stock to $75,000.

*Questions by complainant.*

1st. State your knowledge, if any you have, in relation to notices of calls made by the directors at Vincennes on the stockholders.

Answer. I only know that some notices of such calls to some of the Jeffersonville stockholders were received through the post office.

2d. State how the local board was organized at Jeffersonville.

Answer. By resolution of the Vincennes board.

3d. Did that local board meet from time to time? how often, and at what time?

201 Answer. On April 18, 1850; April 23, 1850; May 28, 1850; June 25, 1850; July 23, 1850; and August 13, 1850.

And further said Savitts says not.

GEORGE F. SAVITTS.

Also the deposition of George Schwartz, taken in behalf of the defendants, (except himself and said insurance company,) this 16th of August, 1853, the plaintiffs objecting to his competency.

Said Schwartz, being of lawful age and first duly sworn, deposes as follows:

First question by defendant. Do you know Robert N. Carnan, of Vincennes.

Answer. I have seen him a few times and presume I would know him now if I was to meet with him.

Question 2d. Did you hear said Carnan in February, 1850, say anything as to the amount of stock in the Knox Insurance Company then subscribed? If yes, state what he said, when and where it was, and to whom he said it.

Answer. I met with him on his first visit to Jeffersonville as agent for said insurance company in Simon Battorff's store, I do not remember the exact time, and was introduced to him by said Battorff as a farmer from the country, and would probably take stock; he sat down beside of me and told me his business; he said the amount of stock then subscribed at Vincennes was $70,000 or $75,000; he also said the reason why they wanted a branch at Jeffersonville was that they had, and probably would have more, bills of exchange, which

202 they could use to better advantage by having a branch at some town on the river; he said they had been in operation some six or eight months (I don't recollect the exact time) and they then had on hand 20 or 25 per cent. of a dividend, and if we at Jeffersonville would take an amount of stock as large as they had taken we should have an equal share with them of the dividend. The conversation was between Carnan and myself.

And further said Schwartz says not.

GEORGE SCHWARTZ.

The further taking of depositions is adjourned till to-morrow, at 3 o'clock p. m.

JACOB GLOSSBRENNER, *J. P.* [SEAL.]

August 17, 1850. Met at 3 o'clock p. m., and proceeded to take the deposition of Samuel H. Patterson in behalf of the defendants, (except said Knox Insurance Company.) Said Patterson, being first duly sworn, deposes as follows:

First question. Do you know Robert N. Carnan, of Vincennes, Indiana?

Answer. I do know him.

Question 2. Did you hear said Carnan in February, 1850, at Jeffersonville, say anything as to the amount of stock in the Knox Insurance Company, subscribed at Vincennes and on the Wabash? If yes, what did he state, and to whom, and for what purpose?

203 Answer Said Carnan came to Jeffersonville about the 20th of February, 1850; he said he was agent of said insurance company to procure subscriptions of stock therein; I think I was the first he talked with at Jeffersonville on that subject; he said there had then been about $75,000 of stock in said insurance company subscribed for besides the New York stock, and all was paid or secured except some subscriptions on the Wabash, which he considered secure because the men were good; the New York stock, he said, had not been paid or secured, and they wanted to get rid of it; he made the foregoing statement to me in the first instance; I afterwards introduced him to Simon Battorff, John S. Battorff, Woods Maberry, and perhaps some others, and I heard him make substantially the same statement to them; he said he wanted to get stock enough subscribed here so as to have a branch here.

Question. State whether or not the foregoing statement, or substantially the same, soon became generally known among the business men at Jeffersonville.

Answer. I understood it was generally known among those of them I talked with.

And further said Patterson says not.

S. H. PATTERSON.

204 STATE OF INDIANA,
*Clark County, ss:*

I, Jacob Glossbrenner, a justice of the peace in and for said county, certify that the foregoing depositions of William F. Collum, George F. Savitts, George Schwartz, and Samuel H. Patterson, were severally taken at the office of said Collum in Jeffersonville, in said county, at the times and for the purpose stated in the captions thereof; that each of said deponents was first duly sworn by me to testify the truth and the whole truth in said suit; that Samuel Judah attended the taking in behalf of the plaintiffs, and R. Crawford in behalf of the defendants, (except said insurance company,) and that said depositions were written in their presence by their consent and were duly subscribed by said deponents severally; and I enclose said depositions and the paper mentioned in the deposition of said Savitts as "Defts. Ex. W." in an envelope, seal the same, and address it to the clerk of the circuit court of the United States for the district of Indiana, at Indianapolis, Indiana.

Witness my hand and seal as such justice of the peace at said county this 17th day of August, 1850.

JACOB GLOSSBRENNER, *J. P.* [SEAL.]

## EXHIBIT "A."

205 *C. M. Allen referred to in the foregoing deposition.*

| Date. | Subscribers' names. | No. of shares. | Residence. | Am't paid in cash. | Amount paid in claims against the company. | Amount unpaid. |
|---|---|---|---|---|---|---|
| 1849. | | | | | | |
| Sept. 13 | Godlove S. Orth | 5 | Lafayette, Ind. | $25 00 | | $475 00 |
| | Thos. C. Burbridge | 5 | do. | 25 00 | | 475 00 |
| | E. M. Burt | 10 | do. | 50 00 | | 950 00 |
| | Peter P. Bailey | 5 | Fort Wayne, Ind. | 25 00 | | 475 00 |
| | Charles Grathe | 4 | Vincennes, Ind. | 40 00 | $360 00 | |
| | Cyrus M. Allen | 5 | do. | 500 00* | | |
| | Thomas J. Brooks | 5 | Mount Pleasant, Ind. | 500 00 | | |
| | James C. Allen | 5 | Palestine, Ill. | 50 00 | | 450 00 |
| | James Nabb | 5 | Lawrence co, Ill. | 100 00 | | 400 00 |
| | Redmond Pinkstaff | 2 | do. | 25 00 | | 175 00 |
| | Jedediah Heberd | 1 | Vincennes, Ind. | 100 00 | | |
| | Joseph G. Bowman | 5 | Lawrence co, Ill. | 30 00 | 200 00 | |
| | Hezekiah Clark | 5 | Richland, Ill. | 100 00 | 400 00 | |
| | Jacob May | 5 | do. | 100 00 | 400 00 | |
| | Horace E. Reck | 2 | Vincennes, Ind. | 200 00 | | |
| | William J. Herberd | 20 | do. | 1,922 56 | 744 44 | |
| | Jacob Pea | 10 | do. | 611 31 | 372 22 | |
| | David Wallace | 5 | Indianapolis, Ind | 125 00 | | 375 00 |
| | Vincent S. West | 2 | Pike county, Ind. | 200 00 | | |
| | John W. Maddox | 2 | Vincennes, Ind. | 120 54 | | 77 46 |
| | Robert N. Carnan | 5 | do. | 150 00† | 350 00 | |
| | John Caldwell | 2 | do. | 20 00 | 180 00 | |
| 1856. | | | | | | |
| Feb. 26 | Thomas M. Gibson | 5 | Mount Pleasant, Ind. | 150 00 | 350 00 | |
| | Thomas J. Brooks | 5 | do. | 300 00 | 150 00 | |
| | Calvin Smith | 15 | Lincoln, Mass. | 450 00 | 1,050 00 | |
| | Cyrus Smith | 15 | do. | 450 00 | 1,050 00 | |
| | M. J. Sherman | 10 | Mount Pleasant, Ind. | 300 00 | 700 00 | |
| Mar. 6 | William Burtch | 10 | Vincennes, Ind. | 643 40 | 356 50 | |
| 9 | Aaron Houghton | 5 | Mount Pleasant, Ind. | 150 00 | 350 00 | |
| 14 | Wm. E. Niblack | 10 | do. | 300 00 | 700 00 | |
| 25 | Charles Danes | 10 | Vincennes, Ind. | 100 00 | 900 00 | |
| 26 | Isaac Mass | 10 | do. | 100 00 | 900 00 | |
| April 2 | Jacob Pea | 10 | do. | 611 31 | 342 22 | |
| | James C. Allen | 5 | Palestine, Ill. | 50 00 | | 450 00 |
| 5 | Richard Near | 5 | Mount Pleasant, Ind. | 100 00 | 400 00 | 220 00 |
| 13 | Henry J. Johnson | 3 | do. | 80 00 | 120 00 | |
| 9 | James R. Bryant | 2 | do. | 60 00 | 140 00 | |
| 19 | J. S. & W. J. Wise | 20 | Vincennes, Ind. | 1,073 80 | 926 20 | |
| | Daniel Gold | 5 | Lawrenceville, Ind. | 500 00 | | |
| 24 | Lucy B. Fiske | 5 | Mount Pleasant, Ind. | 150 80 | 350 00 | |
| | R. G. Caddington | 10 | Vincennes, Ind. | 200 00 | | 890 00 |

D. McHENRY, *Justice of the Peace.*

MARCH 28, 1853.

* Of this, $200 was credited company on salary of Allan as president.
† Residue paid by directors in account.

206 EXHIBIT "W."

*Statement of Knox Insurance Company, July 1, 1850.*

RESOURCES.

| | |
|---|---|
| Stock notes in office | $77,230 00 |
| Bills receivable in office | 6,466 41 |
| Cash balance since paid treasurer | 990 04 |
| Wm. J. Heberd, treasurer, in cash | |

| | | |
|---|---|---|
| Bills receivable and stock notes | $14,872 80 | |
| Due from agents | 18,767 68 | |
| Due from individuals on account | 310 30 | |
| | | $118,137 23 |

LIABILITIES.

| | | |
|---|---|---|
| Capital stock | 97,000 00 | |
| Due to agents | 55 15 | |
| Due to individuals | 1,477 62 | |
| Profit and loss balance | 19,604 46 | |
| | | 118,137 23 |

*Libilities additional for losses ascertained, but unadjusted.*

ST. LOUIS AGENCY.

| | | |
|---|---|---|
| Loss on constitution, (paid) | $5,000 00 | |
| Loss on hemp ropewalk | 5,500 00 | |
| Loss on hemp, (paid) | 281 58 | |
| | | $10,781 58 |

PEORIA AGENCY.

| | | |
|---|---|---|
| Loss on barge, (paid) | 700 00 | |
| Loss on merchandise | 2,400 00 | |
| | 3,100 00 | |
| Louisville agency, tobacco stemmery | 5,000 00 | |
| Maumee agency, life loss | 1,000 00 | |
| Brandenburg agency, loss on flatboat | 500 00 | |
| Rising Sun agency, loss on life | 1,000 00 | |
| Fredericksburg agency, loss on s. land, (paid) | 700 00 | |
| Home office, loss on pol. 21 (fire) | 3,500 00 | |
| | | $25,581 58 |

D. RYAN.

KNOX INSURANCE OFFICE, *July* 22, 1850.

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207 EXHIBIT "Z."

*Statement of the Knox Insurance Company, at Vincennes, Indiana, March* 31, 1850.

| | | |
|---|---|---|
| Premiums received | $49,894 84 | |
| Received from other sources | 220 06 | |
| | | $49,114 90 |

LESS.

| | | |
|---|---|---|
| Losses paid to date | $10,855 54 | |
| Premiums returned | 129 49 | |
| Expense account | 11,540 40 | |
| | | $22,525 43 |
| | | 26,589 47 |

ASSETS.

| | | |
|---|---|---|
| In the hands of Wm. J. Heberd, treasurer | 5,905 02 | |
| In the hands of agents | 12,528 22 | |
| In the hands of other persons | 724 06 | |
| In bills receivable | 7,432 17 | |
| | | 26,589 47 |

LIABILITIES.

| | | |
|---|---|---|
| Bills payable | 1,338 83 | |
| Due agents and others | 49 01 | |
| | | 1,387 84 |
| | | 25,201 63 |

I, Cyrus M. Allen, secretary Knox Insurance Company, certify the foregoing to be correct.

Witness my hand and the seal of office at Vincennes, April 22, 1850.

[SEAL.] C. M. ALLEN, *Secretary.*

208 And afterwards, to wit, on the 19th day of June, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid, come now Samuel Judah, esq., and files an appeal bond in the words and figures following, to wit:

"Whereas in a certain suit in chancery, pending in the circuit court of the United States for the district of Indiana, at the late May term thereof, wherein Adam Ogilvie and sundry other persons were complainants, and the Knox Insurance Company, Levi Sparks, and sundry other persons were defendants, an appeal to the Supreme Court of the United States was prayed by and granted to the complainants on condition that an appeal bond was filed by Samuel Judah, as surety for the appellants, in the sum of five hundred dollars: Therefore know all men that I, Samuel Judah, of Vincennes, Indiana, am held and firmly bound unto the Knox Insurance Company and Levi Sparks, for the use of themselves and the other parties, defendants to said suit, in the full sum of five hundred dollars: *Provided, nevertheless,* That if the complainants and appellants in said suit shall pay all costs which may be adjudged against them on said appeal, then the above

obligations shall be null and void, else to remain in full force and virtue.

Witness my hand and seal this 19th day of June, 1857.

SAMUEL JUDAH. [SEAL.]

Executed in the clerk's office of the circuit court of the United States, Indiana district, June 19, 1857.

H. BASSETT, *Clerk.*

And afterwards this cause was continued from day to day, and from time to time, until the May term of said court, in the year of our Lord one thousand eight hundred and sixty, begun, continued, and holden at Indianapolis, in said district aforesaid, before the honorable John McLean, one of the justices of the Supreme Court of the United States, and the honorable Elisha M. Huntington, district judge of
209 the United States for the district of Indiana, on the 22d day of May, in the year aforesaid.

On motion of Mr. Judah, for complainants, it is ordered that the order in this court in this case made at the May term, 1855, and on the 1st day of June, 1855, and is entered on order book "F," page 167, and which reads as follows, to wit:

OGILVIE AND OTHERS
*vs.*
THE KNOX INSURANCE COMPANY.

It appearing that on the — day of ——— George W. Atchinson, heretofore filed, the said George was made party complainant to this bill, it is now, by the consent of Mr. Judah, for the complainants, and Mr. Crawford, for the defendants, ordered that the answers of the defendants on file shall stand for the answers by the said George ——— ———, and that this order shall stand as if made on the 1st day of May, 1854, be now amended to read as follows:

OGILVIE AND OTHERS
*vs.*
THE KNOX INSURANCE COMPANY AND OTHERS.

It appearing that on the petition of George W. Atchinson, James and Samuel Montgomery, and Charles M. Harding, heretofore filed, they are made party complainants to this bill, it is now, by the consent of Mr. Judah, for complainants, and of Mr. Crawford, for the
210 defendants, ordered that the answers of the defendants on file shall stand for the answers of the said George, James, and Samuel and Charles, and that this order shall stand as if made on the 1st day of May, 1854.

And afterwards, to wit, on the 25th day of May, in the year last aforesaid, that being the 5th judicial day of the May term of said court aforesaid, before the Hon. John McLean, judge as aforesaid, at this term, Mr. Judah, for the complainants, presented the mandate of the Supreme Court of the United States in this case, and it is ordered that the same be spread on record, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honor-
[SEAL.] able the judges of the circuit court of the United States for the district of Indiana, greeting:

Whereas, lately in the circuit court of the United States for the district of Indiana, before you or some of you, in a cause between Adam Ogilvie and others, complainants, and the Knox Insurance Company, Levi Sparks, and others, defendants, in chancery, the decree of the said circuit court was in the following words, viz:

"It is ordered, adjudged, and decreed by the court that the bill of complaint be dismissed."

As by inspection of the transcript of the record of the said
211 circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears: And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this case be, and the same is hereby, reversed with costs, and that the said complainants recover against the said defendants, the Knox Insurance Company, said Levi Sparks, and others, one hundred and fifty-six dollars and twenty-two cents for their costs herein expended, and have execution therefor.

And it is further ordered, adjudged, and decreed that this case be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein, in conformity to the opinion of this court, March 12th. You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

212 Witness the Hon. Roger B. Taney, chief justice of said Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-nine.

*Costs of Complainants:*

| | |
|---|---|
| Clerk | $136 22 |
| Attorney | 20 00 |
| | 156 22 |

Taxed by WM. THOS. CARROLL,
*Clerk of the Supreme Court of the United States.*

It is further ordered, in pursuance of the said mandate, that the complainants have their execution from this court for the costs adjudged then against the defendants in the said Supreme Court, amounting to the sum of one hundred and fifty-six dollars and twenty-two cents.

And afterwards, to wit, on the 26th day of May, in the year aforesaid, that being the 6th judicial day of the May term of said circuit court, begun and holden at Indianapolis, in said district aforesaid, before the honorable judge aforesaid, and the Hon. Elisha M. Huntington aforesaid.

The parties appeared by their counsel, and this cause having been heretofore, to wit, at the May term, 1856, submitted to the court on the bill, petitions and answers, exhibits and depositions of the parties, it is ordered, adjudged, and decreed by the court that the complainants are severally entitled to recover the principal and interest
213 of the several debts in the bill and in the petitions therewith filed set forth, and by the answers and exhibits admitted and proven, that is to say:

| | |
|---|---|
| Joseph H. Conn, for the use of Anderson & Conn, for their judgment rendered on the 19th August, 1851... | $2,469 30 |
| Edwin A. Carrington, for his judgment of August 19, 1851 ..... | 776 03 |
| Samuel Gatty, for his judgment of August 20, 1851..... | 822 08 |
| John J. Roe, James Hewitt, and Robert M. V. Kercheval, traders, &c., for their judgment, August 20, 1851 | 6,769 83 |
| Wesley Smead and William A. Collard, for their judgment of the 20th August, 1851..... | 927 05 |
| Walstein S. Brown, for his judgment of the 20th August, 1851..... | 2,080 34 |
| Adam Ogilvie, Horatio J. Angle, and Wm. St. John, traders, &c., for their judgment, August 20, 1851.... | 7,916 36 |
| John E. Shropshier and Simon Massey, traders, &c, for their judgment, 25th August, 1851..... | 6,047 90 |
| George W. Osbourne, for his judgment of 23d February, 1852 ..... | 3,051 20 |
| Enoch Yost, for his judgment of 23d February, 1852 ... | 504 00 |
| Frederick Gillett, for his judgment of 23d February, 1852 ..... | 233 00 |
| Leonard L. Hyatt, for his judgment of 25th February, 1852 ..... | 3,970 00 |
| Ernst C. Anglerodt and Robert Boothe, traders, &c., for their judgment of the 16th May, 1852..... | 7,104 50 |
| James Montgomery and Samuel Montgomery, traders, &c., for their judgment of the 17th August, 1852..... | 2,798 90 |
| Morrison McKloskey, for his judgment of the 20th August, 1852..... | 2,894 70 |
| Charles W. Harding, for his judgment of the 20th August, 1852..... | 5,276 41 |

And it is further ordered, adjudged, and decreed by the court that the said complainants recover of the defendants severally the several sums of money hereinafter set forth, that is to say:

214 It appears to the satisfaction of the court that the said Thomas L. Dean is indebted by his said note, dated May 2d, 1850, to the said Knox Insurance Company, in the sum of $100, with interest from date, amounting to the further sum of $60 40; therefore

it is considered that the complainants recover of the said Thomas L. Dean the said sum, making together the sum of $160 41, with interest from this date. And it further appears to the satisfaction of the court that the said Thomas L. Dean is indebted by his certain other note, dated May 2, 1850, to the said Knox Insurance Company in the further sum of $900, on which interest is due from the 1st day of July, 1850, amounting to the further sum of $491 85, making in the whole the sum of $1,391 85; and that to secure the said money, so by said note promised to be paid, the said Thomas and Mary E. Dean, his wife, by their deed, dated May 2, 1850, mortgaged to the said insurance company the following real estate in the city of Jeffersonville, Indiana, to wit: part of lot number ninety-nine, (99,) beginning at the southwest corner of said lot, thence running along Market street sixty (60) feet to a stake, thence northwardly one hundred (100) feet to a stake, thence westwardly sixty (60) feet to a stake, thence southwardly one hundred (100) feet to the beginning, as will more fully appear by said deed of record in the recorder's office of Clark county, Indiana, in mortgage book A, No. 1, pages 227, 228. It is therefore considered by the court that the complainants recover
215 of the said Thomas L. Dean the said sum of $1,391 85, with interest from this date until paid, without relief from valuation or appraisement laws; that the equity of redemption of the said Thomas and wife in said mortgaged premises be foreclosed, and that the same be sold as property is sold under execution and without appraisement, to satisfy the said money so as above adjudged; and that for that purpose the clerk will issue a writ of *venditioni exponas*, commanding said sale, and also that if such sale prove insufficient to satisfy said money and interest and costs, the plaintiff have execution against the said Dean for the balance and costs, &c., without relief from valuation or appraisement laws.

And it appears to the satisfaction of the court that Levi Sparks is indebted to the said insurance company as acceptor of a certain bill of exchange, drawn by one Simon Battorff on him, dated October 9th, 1850, for $100, at thirty days after date, in favor of said company, on which there is now due for interest $57 33, making in the whole the sum of $157 33. It is therefore considered that the complainants recover of the said Levi Sparks the said sum of $157 33, with interest from this date, and costs, &c.

And it also appears to the satisfaction of the court that the said Levi Sparks, as drawer, and the said Peter Myers, as guarantor, are indebted to the said Knox Insurance Company by a certain
216 note, dated February 23, 1850, payable to said company, without relief from valuation laws, for the sum of $900, on which there is now due interest amounting to the sum of $491 85, and making in the whole the sum of $1,391 85. It is therefore considered that the complainants recover of the said Levi Sparks and Peter Myers the said sum of $1,391 85, with interest from this date, without relief from valuation or appraisement laws, and costs.

It further appearing to the satisfaction of the court that the said Thomas M. Eddy is indebted to the said Knox Insurance Company by his note to said company, dated May 4, 1850, for $100, with interest,

amounting to the further sum of $60 40, making in the whole the sum of $160 40, it is therefore considered by the court that the complainants recover of the said Thomas the said sum of $160 40, with interest from this date, and costs, &c.

And it appearing to the satisfaction of the court that the said Thos. M. Eddy, as drawer, and the said Benjamin F. Marsh, as guarantor, are indebted to the said Knox Insurance Company, by their note to said company, dated May 4, 1850, for the sum of $900, without relief from valuation or appraisement laws, on which note there is now due for interest the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said Thomas and Benjamin the said
217 sum of $1,391 85, with interest from this date, without relief from valuation or appraisement laws, and costs, &c.

It further appearing to the satisfaction of the court that James Smith, as drawer, and Jacob Schwartz, as guarantor, are indebted to the said Knox Insurance Company, by a certain note payable to said company, dated May 7, 1850, without relief from valuation or appraisement laws, the sum of $900, with interest thereon amounting to $491 85, and making together the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said James and Jacob the said sum of $1,391 85, with interest from this date, without relief from valuation or appraisement laws, and costs, &c.

It appearing to the court that William Leutz, as drawer, and Thomas W. Prather, as guarantor, are indebted to the said Knox Insurance Company, by note payable to the said company dated May 6, 1850, for the sum of $900, without relief from valuation or appraisement laws, on which there is due for interest the sum of $491 85, making in the whole the sum of $1,391 95, it is therefore considered that the complainants recover of the said William and Thomas the said sum of $1,391 85, with interest from this date, without relief from valuation or appraisement laws, and costs, &c.

And it further appearing to the court that the said Thomas W.
218 Prather, as drawer, and the said William Leutz, as guarantor, are indebted to the said Knox Insurance Company, by a note dated May 7, 1850, payable to the said company, for the sum of $900, without relief from valuation or appraisement laws, on which there is due for interest the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered that the complainants recover of the said Thomas and William the said sum of $1,391 85, with interest from this date, and without relief from valuation or appraisement laws, and costs, &c.

And it appearing to the court that George Schwartz, as drawer, and George W. Schwartz, as guarantor, are indebted to the said Knox Insurance Company, by note dated April 11, 1850, payable to said company, without relief from valuation or appraisement laws, for $900, on which there is interest amounting to the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said George and George W. the said sum of $1,391 85, with interest from the date, without relief from valuation or appraisement laws, and costs, &c.

It also appearing to the satisfaction of the court that George W. Schwartz, as drawer, and George Schwartz and Simon Battorff, as guarantors, are indebted to the said Knox Insurance Company, by
219 their note dated May 2, 1850, payable to the said insurance company, without relief from valuation or appraisement laws, for the sum of $900, on which there is interest due amounting to the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said George, George W., and Simon the said sum of $1,391 85, with interest from this date, and without relief from valuation or appraisement laws, and costs, &c.

And it appearing to the satisfaction of the court that the said Sophia Battorff, as drawer, and the said Samuel Battorff, as guarantor, are indebted to the said Knox Insurance Company, by their note dated May 1, 1850, payable to said insurance company, without relief from valuation or appraisement laws, for the sum of $900, on which there is interest due amounting to the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said Sophia and Samuel the said sum of $1,391 85, with interest from this date, without relief from valuation or appraisement laws, and costs, &c.

It further appearing to the satisfaction of the court that the said Andrew S. White, Samuel Wisaker, William Hughes, and Michael Wolfe, by their said firm name of "A. S. White & Co.," as drawers, and the said William Hughes, as guarantor, are indebted to the said Knox Insurance Company, by their note dated February 23, 1850, payable to the said company, without relief from valuation or
220 appraisement laws, for the sum of $3,600, on which $1,934 40 is now due for interest, making in the whole $5,534 40, it is therefore considered by the court that the complainants recover of the said Andrew, Samuel, William, and Michael the said sum of five thousand five hundred and thirty-four dollars and forty cents, with interest from this date, and without relief from valuation or appraisement laws, with costs, &c.

And it appearing to the satisfaction of the court that the said Jacob Schwartz, as drawer, and James Smith, as guarantor, are indebted to the said Knox Insurance Company by their note dated May, 7, 1850, payable to the said insurance company, without relief from valuation or appraisement laws, for the sum of $900, on which there is interest due amounting to the sum of $491 85, and making together the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said Jacob and James the sum of $1,391 85, with interest from this date, and without relief from valuation or appraisement laws, and costs, &c.

And it further appearing to the satisfaction of the court that the said Samuel H. Patterson, as drawer, and the said William F. Collum, as acceptor, are indebted to the said Knox Insurance Company, by their certain bill of exchange dated September 28, 1850, payable to
221 the said company thirty days after the said date, for the sum of $200, on which there is now due $115 for interest, making in the whole $315, therefore it is considered by the court that the

complainants recover of the said Samuel H. and William the said sum of $315, with interest from this date until paid, with costs, &c.

Also it appearing to the satisfaction of the court that the said William D. Cullom, as drawer, and the said Simon Battorff and John S. Battorff, as guarantors, are indebted to the said Knox Insurance Company, without relief from valuation or appraisement laws, for the sum of $1,800, on which there is now due for interest $983 70, making in the whole the sum of $2,783 70, therefore it is considered by the court that the complainants recover of the said William F., Simon, and John S. the said sum of $2,783 70, with interest from this date, without relief from valuation or appraisement laws, with costs, &c.

It appearing to the satisfaction of the court that the said John Mitchell, as drawer, and the said William Logan, as acceptor, are indebted to the said Knox Insurance Company, by their bill of exchange dated October 7, 1850, payable to the said company thirty days after the date thereof, for $100, on which there is due for interest $57 33, making in the whole $157 33, therefore it is considered by the court that the complainants recover of the said William and John the said sum of one hundred and fifty-seven dollars and thirty-three cents, with interest from this date until paid, with costs, &c.

And it appearing to the satisfaction of the court that the
222 said Carter J. Logan, as drawer, and the said John D. Woodburn, as guarantor, are indebted to the said Knox Insurance Company, by their note dated May 4, 1850, payable to the said company, without relief from valuation or appraisement laws, in the sum of $900, on which there is due for interest the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said Carter and John D. the said sum of $1,391 85, with interest from this date, and without relief from valuation or appraisement laws, and costs, &c.

It also appearing to the satisfaction of the court that the said Peter Myers, as acceptor, and the said Henry French, as drawer, of a certain bill of exchange, dated September 30, 1850, payable to the said Knox Insurance Company at thirty days after date, are indebted to said company in the sum of four hundred dollars, the sum named in said bill, and also the interest thereon, being the sum of $232, making in the whole the sum of $632, therefore it is considered by the court that the complainants recover of the said Peter and Henry the said sum of $632, with interest from this date until paid, and costs, &c.

And it further appearing to the satisfaction of the court that the
223 said Peter Myers, as drawer, and the said Henry French, as guarantor, are indebted to the said Knox Insurance Company, by their note dated March 9, 1850, payable to the said company, without relief from valuation or appraisement laws, in the sum of $1,800, on which there is also due for interest the sum of $983 70, making in the whole the sum of $2,783 70, therefore it is considered by the court that the complainants recover of the said Peter Myers and Henry French the said sum of $2,783 70, with interest from this date until paid, without relief from valuation or appraisement laws, and costs, &c.

And it also appearing to the satisfaction of the court that the said

Henry French, as drawer, and the said Peter Myers, as guarantor, are indebted to the said Knox Insurance Company, by their note dated March 9, 1850, payable to the said company, without relief from valuation or appraisement laws, for the sum of $1,800, on which there is now due for interest the sum of $983 70, making in the whole the sum of $2,783 70, therefore it is considered by the court that the complainants recover of the said Henry and Peter the said sum of $2,783 70, with interest from this date until paid, and without relief from valuation or appraisement laws, and costs, &c.

And it appearing to the satisfaction of the court that the said Benjamin F. Taylor, as drawer, and the said Thomas Taylor, as guarantor, are indebted to the said Knox Insurance Company, by their note dated the 8th of May, 1850, payable to the said company, without relief from valuation or appraisement laws, for the sum of $900, on which there is now due for interest the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said Benjamin F. and
224 Thomas the said sum of $1,391 85, with interest from this date until paid, and without relief from valuation or appraisement laws.

And it further appearing that the said James Mitchell, as drawer, and the said George F. Savitts, as guarantor, are indebted to the said Knox Insurance Company, by their note dated May 10th, 1850, payable to the said company, without relief from valuation or appraisement laws, for the sum of $900, on which there is now due for interest $491 85, making in the whole the sum of $1,391 85, it is therefore considered by the court that the complainants recover of the said James and George the said sum of $1,391 85, with interest from this date until paid, and without relief from valuation or appraisement laws, with costs, &c.

And it further appearing to the satisfaction of the court that the said Athanasius Wathen, deceased, at the time of his death was indebted to the said Knox Insurance Company, by his note dated February 23, 1850, payable to said company, without relief from valuation or appraisement laws, for the sum of $4,500, on which there is now also due for interest the sum of $2,475, making in the whole the sum of $6,975, and that the said Elizabeth Wathen is the administratrix of the estate of the said Athanasius, deceased, it is therefore considered by the court that the said complainants recover of the said Elizabeth, administratrix as aforesaid, the said sum of $6,975, with in-
225 terest thereon from this date until paid, to be levied of the estate of the said Athanasius in the hands of the said Elizabeth, administratrix, without relief from valuation or appraisement laws, with costs, &c.

And it appearing to the satisfaction of the court that the said Athanasius Wathen, deceased, in his lifetime was indebted to the said Knox Insurance Company, by his acceptance of a certain bill of exchange drawn by one James Ragwin on him in favor of said company, at thirty days after date, the 28th September, 1850, for the sum of $500, which remains unpaid, and is due, with the interest, amounting to the further sum of $277 50, and making in the whole the sum of $777 50, and that the said Elizabeth Wathen is the administratrix

of the said Athanasius, it is therefore considered by the court that the complainants recover of the said Elizabeth, administratrix as aforesaid, the said sum of $777 50, with interest from this date, to be levied of the estate of the said Athanasius in her hands to be administered, and costs, &c.

It also appearing to the satisfaction of the court that the said Cynthia Maberry, as drawer, and the said Woods Maberry and Hiram Maberry, as guarantors, are indebted to the said Knox Insurance Company, by their note dated May 2, 1850, payable to the said company, without relief from valuation or appraisement laws, in the sum of $450, with interest thereon, amounting to the sum of $247 45, and making in the whole the sum of $697 45, it is therefore consid-
226 ered by the court that the complainants recover of the said Cynthia, Woods, and Hyram the said sum of $697 45, with interest thereon from this date until paid, without relief from valuation or appraisement laws, with costs, &c.

And it also appearing to the satisfaction of the court that the said Sarah Maberry, as drawer, and the said Woods Maberry and Hiram Maberry, as guarantors, are indebted to the said Knox Insurance Company, by their note dated May 2, 1850, payable to said company, without relief from valuation or appraisement laws, in the sum of $450, with interest thereon, amounting to the sum of $247 45, it is therefore considered by the court that the complainants recover of the said Sarah, Woods, and Hiram the said debt and interest, amounting together to the sum of $697 45, with interest thereon from this date until paid, and without relief from valuation or appraisement laws, and costs, &c.

It also appearing to the satisfaction of the court that the said Woods Maberry and Hiram Maberry are indebted to the said Knox Insurance Company, by their note to said company, dated May 2, 1850, for $100, with the interest thereon, $60 45, making together $160 45, it is therefore considered by the court that the complainants recover of the said Woods and Hiram the said sum of $160 45, with interest from this date, and costs, &c.

It further appearing to the satisfaction of the court that the said Woods Maberry is indebted to the said Knox Insurance Com-
227 pany, as acceptor of a bill of exchange on him in favor of the said company, at thirty days after date, and dated October 4, 1850, for the sum of $500, with interest thereon, amounting to the sum of $262 75, and making together the sum of $762 75, it is therefore considered by the court that the complainants recover of the said Woods Maberry the said sum of $762 75, with interest thereon from this date until paid, and costs, &c.

And it further appearing to the satisfaction of the court that the said Hiram Maberry, as drawer, and the said Woods Maberry, as guarantor, are indebted to the said Knox Insurance Company, by their said note dated February 23, 1850, and also by their said note dated February 23, 1850, and also by their certain other note of the same date, in which Woods is drawer and said Hiram is guarantor, each payable to said company, without relief from valuation or appraisement laws, for the sum of $2,550, together $4,500, on which

there is interest due, amounting to the sum of $2,475, and making in the whole $6,975, it is therefore considered by the court that the complainants recover of the said defendants $6,975, with interest thereon, and costs, without relief from valuation or appraisement laws.

And it further appearing to the court that the said William G. Armstrong and Benjamin F. Marsh are indebted to the said Knox Insurance Company, by their note dated May 4, 1850, made by said William, as drawer, and by said Benjamin, as guarantor, payable to said company, without relief from valuation or appraisement laws, for the sum of $1,800, on which there is due for
228 interest the sum of $983 70, making in the whole the sum of $2,783 70, it is therefore considered by the court that the complainants recover of the said William G. and Benjamin F. the sum of $2,783 70, with interest from this date until paid, without relief from valuation or appraisement laws, and costs, &c.

And it further appearing to the court that the said William G. Armstrong is indebted to the said Knox Insurance Company, as the acceptor of a bill of exchange dated September 30, 1850, drawn by Benjamin F. Marsh in favor of the said company, at thirty days, for $200, on which there is due for interest the sum of $116, making together the sum $316, it is therefore considered by the court that the complainants recover of the said William G. the said sum of $316, with interest from this date until paid, and costs, &c.

And it further appears to the satisfaction of the court that the said Benjamin F. Marsh, as acceptor, and the said William G. Armstrong, as drawer, of a certain bill of exchange dated September 30, 1850, payable to the Knox Insurance Company thirty days after date, are indebted to said company in the amount of said bill, $200, with interest thereon, amounting to the sum of $116, making in the whole the sum of $316, it is therefore considered by the court that the complainants recover of the said Benjamin F. and William G. the said sum of $316, with interest thereon from this date until paid, and costs, &c.

And it appearing to the satisfaction of the court that the said Benjamin F. Marsh, as drawer, and the said William G. Armstrong,
229 as guarantor, are indebted to the said the Knox Insurance Company, by their note dated March 16, 1850, payable to the said company, for the sum of $1,800, without relief from valuation or appraisement laws, on which there is due for interest the sum of $983 70, making together the sum of $2,783 70, it is therefore considered by the court that the complainants recover of the said Benjamin F. and William G. the said sum of $2,783 70, with interest from this date until paid, and without relief from valuation or appraisement laws, and costs, &c.

It appearing to the satisfaction of the court that the said Myron Stratton is indebted to the Knox Insurance Company by note, dated November 1st, 1850, payable to the said company, without relief from valuation or appraisement laws, for the sum of $450, on which there is due for interest the further sum of $247 45, making together the sum of $697 45, it is therefore considered by the court that the complainants recover of said Myron the said sum of $697 45, with interest from this date until paid, and costs; and inasmuch as the

payment of the said note is secured by mortgage deed of the said Myron and Mary A., his wife, dated June 1st, 1850, recorded in the recorder's office of Clark county, Indiana, in mortgage book A, No. 1, pages 247, 248, on the 26th day of June, 1850, to the said insurance company, for all that parcel of ground in the city of Jeffersonville, Indiana, being part of lot number two hundred and thirty-one, (231,) commencing at a stake sixty (60) feet from the northeast corner
230 of said lot, thence along the line of Wall street southwardly thirty-one (31) feet, thence westwardly seventy-one (71) feet eight (8) inches to a stake, thence northwardly thirty-one (31) feet to a stake, thence eastwardly seventy-one (71) feet eight (8) inches to the place of beginning. It is considered by the court that the complainants have the writ of *venditioni exponas* to sell the parcel so mortgaged as real estate, is subject to sell under execution, and without relief from valuation or appraisement laws, in satisfaction of the money so as above adjudged to be due, interest and costs. And if the proceeds of such sale be not sufficient to satisfy said money, interest, and costs, to make the balance from the estate of the said Myron, &c.

And it appearing to the satisfaction of the court that John Mitchell, as drawer, and George F. Savitz, as acceptor, are indebted to the said Knox Insurance Company, by their bill of exchange dated July 15th, 1850, payable to the said insurance company thirty days after date, for the sum of five hundred dollars, on which there is due for interest $288 33, making in the whole $788 33, it is therefore considered by the court that the complainants recover of the said John and George F. the said sum of $788 33, with interest from date until paid, and costs, &c.

And it appearing to the satisfaction of the court that the said George F. Savitz is indebted to the said Knox Insurance Company by his note, dated March 9, 1850, payable to said company, with-
231 out relief from valuation or appraisement laws, for the sum of $2,700, on which there is now due for interest the sum of $1,484 90, making in the whole the sum of $4,183 90, it is therefore considered by the court that the complainants recover of the said George F. the said sum of $4,183 90, with interest from this date until paid, and costs, &c., and without relief from valuation or appraisement laws.

And it appearing to the satisfaction of the court that the said Dutee Underwood is indebted to the said Knox Insurance Company by note, dated April 6th, 1850, payable to said company, without relief from valuation or appraisement laws, for the sum of $900, on which there is due for interest the sum of $491 85, making in the whole the sum of $1,391 85, it is therefore considered that the complainants recover of the said Dutee the said sum of $1,391 85, with interest from this date until paid, without relief from valuation or appraisement laws, and costs, &c.

And it also appearing that John Dixon was indebted to the said Knox Insurance Company by note, dated March 16th, 1850, payable to said company, without relief from valuation or appraisement laws, for $450, on which there is due for interest $247 45, it is therefore considered that the complainants recover of the said John the said

sum of $697 45, with interest from this date, without relief from valuation or appraisement laws, and costs, &c.

232 All which said notes were due, and are unpaid by the said several defendants on their shares of capital stock of the Knox Insurance Company, are more particularly set forth in the complainants' bill.

And it is further ordered that the complainants recover of the defendants the sum of , for their costs and charges expended about this suit up to this time.

And whereas divers parties, not named in the original complaint, have filed their petitions in this suit, praying, as creditors of said insurance company, to be made parties, or to have a share of any fund which might be recovered herein: it is ordered that all questions, as to the distribution of said fund, and as to any priority of payment among the creditors of said insurance company, as well as all other equities in this case, not hereinbefore determined, are reserved and continued till the further order and judgment of this court thereon, and when decided, to be decided as if made immediately before this decree was entered.

SAMUEL JUDAH,
*For Complainants.*
R. CRAWFORD,
*For Defendants.*

233 And afterwards, to wit: At the November term of said court, begun, continued, and holden at Indianapolis, in the district aforesaid, on the twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty, before the honorable Elisha M. Huntington, district judge, aforesaid,

Comes now R. Crawford, esq., and files the petition of Hugh Kerr and Allen Gilmore, asking to be made a party complainant herein, in these words, to wit:

To the honorable judges of the circuit court of the United States for the District of Indiana:

Your petitioners, Hugh Kerr and Allen Gilmore, citizens of the State of Kentucky, respectfully represent that they are creditors of the Knox Insurance Company as follows, that is to say: That at the August term, eighteen hundred and fifty-one, of the circuit court of Knox county, in the State of Indiana, to wit: on the 25th day of said month, by the consideration of said court, your petitioners recovered a judgment against the said Knox Insurance Company for the sum of five thousand three hundred and thirty-nine dollars and seventeen cents, ($5,339 17,) and eighty-six cents costs of suit, on which said judgment an execution of *fieri facias* was afterwards issued from the clerks's office of said court, which said execution was thereafter returned by the sheriff of said county, to whom the same had been issued, that no property, personal or real, was found in the said county to satisfy said execution; that the said Knox Insurance Company is utterly and notoriously insolvent, and that the said

234 judgment is due, in full force, and wholly unpaid. Wherefore your petitioners pray that they may be made parties com-

plainant in the bill of complaint now pending in this court, wherein Adam Oilvie and others are complainants, and the said Knox Insurance Company and others are defendants; and that the said judgment, interest, and costs may be paid in full, or pro rata with those of other creditors, and that he may receive such other and further relief as may be just.

HUGH KERR and
ALLEN GILMORE.

DOUGLASS TYLER.
*For Petitioners.*

And day is given.

And afterwards, to wit, on the twenty-ninth day of November, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

Come now R. N. Byrne and sundry other creditors of the Knox Insurance Company, by their counsel, (except Mr. Judah,) and file their petition, setting forth that they have been made parties complainants to the bill filed therein, (in the words and figures following, to wit:)

To the honorable the judges of the United States circuit court for the district of Indiana:

Your petitioners, R. N. Byrne, Hibbard & Co., George A. Trowbridge and Oliver Noyes, John Coulson, John P. Morton and Henry A. Griswold, Simon D. Powers, Abbey & Rose, Samson
235 Cariss, Henry Covington, Huff & Ambrose, Benjamin F. Baker, Andrew Low and Rowland Whitney, N. H. Brigham, John Ludlow, J. P. Hall, and Root & Sprague, would show unto your honors that on the first day of April, 1852, Adam Ogilvie and others filed their bill in chancery in this court as well on behalf of themselves as of all others who would make themselves parties thereto against the Knox Insurance Company, and divers other persons who were and are indebted to the said Knox Insurance Company, alleging the recovery by them of judgments at law against said corporation, and that execution thereon had been returned, "no property found," to satisfy the same; and that the said other defendants were indebted to said company in divers sums, which said sums ought to be applied to the payment of said debts; and your petitioners being also judgment creditors of said corporation, and having caused their executions to be issued on their respective judgments which have been returned "*nulla bona*," have, upon their respective petitions, been regularly made parties complainant to said bill; and at the last term of this court a decree was rendered in said cause, decreeing the liability of the said defendants to the said Knox Insurance Company, and decreeing and requiring them to pay the several sums so found to be due from them to and for the use of the said complainant, to which proceedings, still pending in this court, your petitioners crave leave to refer for greater certainty.

And your petitioners would further show that numerous other persons are indebted in like manner to the said Knox Insur-
236 ance Company, whose indebtedness ought to be paid for the benefit of your petitioners; the amount found to be due from those against whom a decree has already been rendered being insufficient to liquidate the claims of your petitioners and the other parties entitled to participate in the distribution of said funds. Your petitioners therefore pray that a receiver may be appointed by this honorable court to receive and collect from the persons so indebted the amounts due from them respectively; that said receiver be empowered to bring and prosecute all necessary suits in the name of the Knox Insurance Company for the use of the said receiver against the persons so indebted; that all moneys collected by him be paid into court and held subject to its order; and that the said receiver be invested with all powers which to this court shall seem necessary and proper in the premises; and that the said Knox Insurance Company, its president, secretary, treasurer, and all its officers and agents, having the possession of them or any of them, be required forthwith to surrender and deliver to the receiver, to be appointed under this petition, all notes, bills, mortgages, and other securities and evidences of debt due to said Knox Insurance Company, and that such further order be made as equity may require.

And your petitioners will ever pray, &c,,

GOOKINS, THOMAS & ROBERTS,
*Solicitors for Petitioners.*

That they have obtained judgments and the return of executions thereon unsatisfied against the Knox Insurance Company, and that numerous persons are indebted to the said Knox Insurance Company in divers sums of money, which ought to be collected and ap-
237 plied to the payment of the demands of said creditors, and for the appointment of a receiver to make such collections.

And thereupon it is ordered that George C. Duy be appointed a receiver, who is hereby authorized to demand and receive from the Knox Insurance Company, and from its officers and agents, all bonds, notes, bills, mortgages, and other evidences of debt in their possession, and all books and other writings, showing the state of the accounts between the said Knox Insurance Company and any and all its debtors, and persons with whom it has had dealings. And the said Knox Insurance Company, its president, secretary, treasurer, and all other officers and agents, are hereby required, on the request of such receiver, to surrender and deliver to him all such bonds, bills, notes, accounts, mortgages, and other evidences of debt, books and other writings, showing the state of the accounts between the said Knox Insurance Company and its debtors; and the said receiver is hereby authorized and empowered to collect and receive from all such persons the sums so due from them, or any of them; to institute and prosecute to final judgment and execution all suits which may be necessary to recover such moneys so due and owing; and that whenever and as fast as such moneys are recovered and received, they be paid into court and held subject to its order. And it is ordered that the said receiver

give bond in the penal sum of five thousand dollars, with security to be approved by the judge of this court, payable to the United States for the use of any and all persons interested in such moneys, conditioned that he will faithfully keep and punctually pay over all moneys which may come into his hands as such receiver, and per-
238 form all other duties required of him as such, and that he report his doings in the premises to this court; and with the consent of the creditors other than the original complainants and those whose petitions are filed by Mr. Judah, it is ordered that the said parties represented by him are not to be charged with any of the costs or expenses arising under or consequent upon the making of this order, or any of the proceedings under it.

And afterwards, to wit, on the thirtieth day of November, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

Come now the original complainants, by Mr. Judah, and move the court upon petition filed in these words, to wit, (paper not found,) for a re-argument, and day is given, &c.

And afterwards, to wit, on the seventh day of December, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable S. H. Treat, a district judge of the United States,

Upon motion, Mr. Gookins has leave to withdraw the petitions filed herein of John W. Pickett and David Abbey, and day is given, &c.

And afterwards, to wit, on the day and year last aforesaid, at a circuit court begun and holden as aforesaid, before the honorable judge aforesaid,

239 And now, at this time, this cause comes on to be heard upon the equity reserved in the decree and order made in this cause at the last term, touching the distribution of the funds recovered and to be recovered and received under said decree, and further directions concerning the same, and counsel for the respective parties having been heard: It is now ordered, adjudged, and decreed, that all the moneys recovered or to be recovered under the decree made in this cause at the last term be distributed among the original complainants, and the several persons who have filed their petitions, praying to be made parties complainant, and who may prove their claims as judgment and execution creditors of the Knox Insurance Company before the master in chancery, to whom this cause is referred, which said petitioners are Ernst Anglerodt and Robert Barthe, Morrison McCloskey, John Shropsheir and Simon Massey, Leonard L. Hyatt, Charles N. Harding, James Montgomery and Samuel Montgomery, R. N. Byrne, George A. Trowbridge and Oliver A. Noyes, John P. Morton and Henry A. Griswold, Simon D. Powers, Henry Covington, Samson Cariss, Abbey & Rose, John Coulson, Hibbard & Co., George W. Atchinson, Samuel P. Hall, John Ludlow, Elisha Sprague and Henry R. Root, Benjamin F. Baker, Andrew Low and Rowland Whitney, The Cresent Manufacturing Company, N. H. Brigham, Alfred Erskin, William C. Huff and Goodhue Ambrose, Hugh Kerr and Allen Gilmore, which distribution is to be made to them in equal proportions upon the amounts due to them, respectively.

240 And it is further ordered, adjudged, and decreed, that from the distributive shares of the petitioners other than those whose petitions are filed by Mr. Judah, there be deducted the sum of six hundred and seventy-five dollars, to be apportioned *pro rata* upon the amounts found to be due them, respectively, and that such sum be brought into court and made subject to its order.

And it is further ordered that the master in chancery, to whom this cause is referred, inquire and report what further costs and expenses have accrued since the filing of the master's report at the November term, 1856, which ought to be paid by the said petitioners other than those whose petitions are filed by Mr. Judah, to be in like manner deducted *pro rata* from the distributive shares of such petitioners, and that such sum, when ascertained, be paid into court subject to its order.

And it is further ordered that this cause be referred to John H. Rea, esq., a master in chancery of this court, to state an account of the amount which ought to be paid for such further costs and expenses; and also to inquire and report to this court the amount due to the said complainants and petitioners, respectively; and also to apportion upon the amounts respectively due to the petitioners whose petitions were not filed by Mr. Judah, the said sum of six hundred and seventy-five dollars, and their *pro rata* proportions of such further sum as
241 said master shall report for the additional cost and expenses since the November term, 1856, above mentioned.

And it is further ordered, adjudged, and decreed, that all the several defendants against whom decrees were rendered at the last term of this court do forthwith pay into this court the amounts so adjudged against them respectively, with the costs of this suit, and that the same be held by the clerk, subject to the final order and direction of the court, and that in default of said payment execution issue against them as upon judgments at law.

And thereupon the said complainants, Adam Ogilvie, Horatio J. Angle, and William St. John, being the partners in the firm of Ogilvie, Angle & Co.; Samuel Gatty, Walstein S. Brown, Wesley Smead, and William A. Callard, being the firm of Smead & Co.; Edwin A. Carrington and Joseph H. Conn, James Hewitt, John J. Roe, and Robert M. V. Kercheval, being the firm of Hewitt, Roe & Co; Enoch Yost, George W. Osborne, Frederick Gillett, Ernst Anglerodt, and Robert Barthe, being the firm of Anglerodt & Barthe; Morrison McKlosky, John E. Shropshier, and Simon Massey, being the firm of Shropshier & Massey; Leonard L. Hyatt, Charles M. Harding, and James Montgomery, and Samuel Montgomery, being the firm of J. & S. Montgomery, by Samuel Judah, their counsel, object to so much of the order and decree of distribution this day made as recognize the right of R. N. Byrne, George A. Trowbridge, and Oliver A. Noyes, John P. Morton, and Henry A. Gris-
242 wold, Simon D. Powers, Henry Covington, Samson Cariss, Abbey & Rose, John Coulson, Hibbard & Co., Samuel P. Hall, John Ludlow, Elisha Sprague and Henry A. Root, Benjamin F. Baker, Andrew Low and Rowland Whitney, The Crescent Manufacturing Company, N. H. Brigham, Alfred Erskine, William A. Huff

and Goodhue Ambrose, Hugh Kerr and Allen Gilmore, to be admitted severally to share in the funds, the subject of the bill of complaint in this cause, and to receive equal proportions upon the amounts due to them respectively, and pray that an appeal may be granted to them from said order and decree of distribution to the Supreme Court of the United States; and thereupon it is ordered that an appeal be granted to the said parties to said court on the bond of Samuel Judah, as security in the sum of twenty thousand dollars, to be filed forthwith, which is done accordingly in the words and figures following, to wit:

Whereas in a certain suit in chancery pending in the circuit court of the United States for the district of Indiana, at the present November term thereof, wherein Adam Ogilvie and sundry other persons are complainants, and the Knox Insurance Company and others are defendants, an appeal from a certain order and decree of distribution therein was prayed by said Ogilvie and others to the Supreme Court of the United States, and was granted on condition that an appeal bond was filed by Samuel Judah as surety for the said appellants in the sum of twenty thousand dollars: Therefore, know all men
243 that I, Samuel Judah, of Vincennes, Indiana, am held and firmly bound unto the Knox Insurance Company, for the use of all the parties interested in said order and decree, in the full sum of twenty thousand dollars.

Provided, nevertheless, that if said appellants shall well and truly prosecute said appeal, and shall pay all costs which may be adjudged against them on said appeal, then the above obligation to be null and void; else to remain in full force and virtue.

Witness my hand and seal the 7th day of December, 1860.

SAMUEL JUDAH. [SEAL.]

Executed in the clerk's office, circuit court United States, Indiana district, December 7, 1860.

H. BASSETT, *Clerk*,
By JOHN H. REA.

And afterwards, to wit, on the twentieth day of December, in the year aforesaid, at a circuit court aforesaid, begun and holden at the place aforesaid, before the honorable judge aforesaid,

This day comes George C. Duy, esq., and presents to the court his bond as receiver herein, which is approved by the court, and ordered to be filed, and which is in the words and figures following, to wit:

Know all men by these presents, that we, George C. Duy, Samuel B. Gookins, and Blackford B. Maffatt, are held and firmly bound unto the United States, for the use of all persons interested in
244 the money to be received by the said George C. Duy as a receiver, as in the condition of this obligation mentioned, in the penal sum of five thousand dollars, to the payment of which we bind ourselves jointly and severally. Dated this 29th day of November, 1860.

The condition of the above obligation is such, that whereas the said George C. Duy has been appointed by the circuit court of the United States for the district of Indiana a receiver in a certain suit in chancery pending in said court, wherein Adam Ogilvie and other creditors of the Knox Insurance Company are complainants, and the said Knox Insurance Company and divers debtors thereof are defendants, to collect and receive certain moneys to which such creditors are entitled under the decree and proceedings in such cause: Now, if the said George Duy shall faithfully keep and punctually pay over all moneys which may come into his hands as such receiver, and perform all other duties required of him as such receiver, then this obligation shall be void; otherwise in full force.

GEO. C. DUY. [SEAL.]
S. B. GOOKINS. [SEAL.]
B. B. MAFFATT. [SEAL.]

And day is given.

And afterwards, to wit, on the 22d day of December, in the year aforesaid, at a circuit court aforesaid, begun and holden before the honorable judge aforesaid,

Comes now John L. Ketcham, esq., and, upon motion, he is allowed fifty dollars ($50) for his services as commissioner in said cause.

245 UNITED STATES OF AMERICA,
*District of Indiana, ss.*

I, John H. Rea, clerk of the circuit court of the United States for the seventh judicial circuit and district of Indiana, do hereby certify the above and foregoing to be a true, correct, and complete copy of a record in the case of Adam Ogilvie and others against the Knox Insurance Company and others, as now appears in my office.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Indianapolis, this fifth day of February, A. D. 1861.

JOHN H. REA, *Clerk.*